

1-24-2014

## State v. Herrera Clerk's Record v. 2 Dckt. 41494

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**COPY**

Vol. 2 of 7

IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**

LAW CLERK

S.C. #41494

**STATE OF IDAHO**

*Plaintiff / Respondent*

vs.

**JOSEPH DUANE HERRERA**

*Defendant / Appellant*

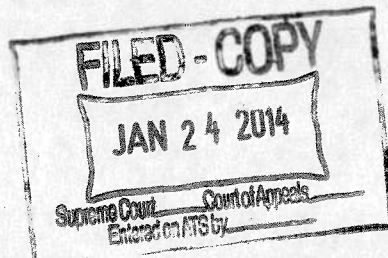
VOLUME II

**CLERK'S RECORD ON APPEAL**

*Appealed from the District Court of the First Judicial District  
of the State of Idaho, in and for the County of Benewah.*

Lawrence G. Wasden,  
Attorney General  
*Attorney for Respondent*

State Appellate Public Defender  
*Attorney for Appellant*



41494

IN THE SUPREME COURT OF THE  
STATE OF IDAHO

STATE OF IDAHO,	)	
Plaintiff-Respondent,	)	
	)	SUPREME COURT NO. 41494
vs.	)	
	)	
JOSEPH DUANE HERRERA,	)	
Defendant-Appellant.	)	
<hr/>	)	

Appealed from the First Judicial District, Benewah County, Idaho

HONORABLE FRED M. GIBLER, presiding

Honorable Lawrence G. Wasden, Attorney General, PO Box 83720, Boise, Idaho 83720-0010

State Appellate Public Defender, 3050 North Lake Harbor Lane, Boise, Idaho 83703

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Time	Speaker	Note
<u>7:52:35 AM</u>	03/12/2013	Case No. CR2011-2053, State of Idaho vs. Joseph Duane Herrera. Douglas Paul Payne, Prosecuting Attorney, assisted by attorney Mariah Dunham; James E. Siebe, Defense Attorney. Hearing: Jury Trial.
<u>7:53:22 AM</u>		District Judge Fred M. Gibler presiding; Byrl Cinnamon, Court Reporter; Carol Ryan, Deputy Clerk. Darryl Hindman, Bailiff.
<u>9:41:08 AM</u>	Judge	Calls case. Explains jury selection. Introduces attorneys. Reads charge. Explains procedure. Admonishes not to discuss case. Voir dire.
<u>9:48:16 AM</u>	Clerk	Reads jury voir dire oath.
<u>9:48:32 AM</u>	Judge	Michael Lawson excused, Desiree Shatto excused, Theresa Kinzer excused, Rebecca Brusseau excused, Chivon Croson excused, Barbara Bierman excused, Vern Fritsche excused, Joseph Mitchell excused, Michael Nelson excused, Susan Brown excused, Maryann Bailey excused, Leonard Thaut excused, Randy Moore excused, Kenneth Mitchell excused, Candi Renner excused, Nona Davis excused, Amie Scheinost excused, Linda Thomas excused, Sandra Hyk excused, Robert McFadden excused, Erika Darst excused, Erma Castenada excused.
<u>10:40:18 AM</u>	Break	
<u>10:42:20 AM</u>	Judge	Back on the record. Seventeen jurors left. Will have jurors seat themselves.
<u>10:49:08 AM</u>	PA	Introduces himself. Voir dire questions.
<u>10:56:18 AM</u>	Judge	Questions jury.
<u>11:12:38 AM</u>	DA	Introduces himself. Voir dire questions. Asks to have juror 179 excused.
<u>11:44:09 AM</u>	PA	Questions juror no. 179.
<u>11:44:56 AM</u>	Judge	Excuses Greg Gibson.
<u>11:47:33 AM</u>	PA	Additional voir dire questions.
<u>11:53:20 AM</u>	Judge	5 minute break.
<u>12:05:41 PM</u>	Judge	Back on the record. Proposed jury panel has returned.
<u>12:07:09 PM</u>	DA	Questions. Passes panel for cause.
<u>12:12:20 PM</u>	PA	Passes panel for cause.
<u>12:12:30 PM</u>	Judge	Excuses jurors for the day. Report in before 9:00 a.m. tomorrow. Hope to be in a position to seat jury at that time. Admonishes jurors not to discuss. If someone persists, notify bailiff or judge immediately. Jurors are to bring a lunch. May renumber and call to seat.
<u>1:11:41 PM</u>	Judge	Back on the record. Second panel of proposed jurors is in courtroom.
<u>1:12:20 PM</u>		Judge explains jury process for Voir Dire. Introduces attorneys and defendant. Reads charge from Information.
<u>1:18:50 PM</u>	Clerk	Gives voir dire oath.
<u>1:19:10 PM</u>	Judge	Begins voir dire questioning.

Time	Speaker	Note
<u>1:19:26 PM</u>		Excuses for cause: Ryan Barbour, Donald Page, Douglas Cook, Nicholas Hendrickx, Kenneth Haynes, Mary Skinner, Vicky Patrick, Douglas Cardwell, Alison Silvia, Douglas Brede, Paulette Jordan, Devon Barta, Ronald Cox, Cora Monzingo, Donald Reid, Rhonda Stancil, Vinnie Jorgensen, Deborah Gingras, Dean Short, Lucas Rose, Cynthia Schatz, Laci Hanson, Milinda Witten, Jeffrey Krieter, Robert Birdsall,
<u>2:02:50 PM</u>	PA	Voir dire questions of juror 358.
<u>2:03:33 PM</u>	Judge	Lonnie Anderson, Kevin Beck, Randall Hurt, Anita Riemann, Richard Beplate,
<u>2:32:04 PM</u>		Break to discuss matters with counsel in chambers.
<u>2:43:56 PM</u>	Judge	Reason for taking break was numbers getting down there as to whether enough people for jury. At this point a total of 24 possible jurors and need 38 for 2 alternates. By the time we're done, might have to do it without an alternate. Unfortunate, but trial will be vacated and rescheduled with new jury. Will consider whether trial will be here or if will move to a different county.
<u>2:46:21 PM</u>		Will vacate trial. All jurors will be excused. Thanks all for participating. Excuses jurors.
<u>2:47:49 PM</u>	Judge	Would like to set status conference in near future to see where we are on change of venue and what dates are available. Asks attorneys to provide unavailable dates May through July.
<u>2:51:51 PM</u>	Judge	Will set for Status conference March 22nd at 9:30 a.m.

FILED  
BENEWAH COUNTY

2013 MAR 18 PM 2:19

BY: CJR DEPUTY

SIEBE LAW OFFICES, PLLC  
JAMES E. SIEBE, ISBN 2362  
608 Northwest Blvd., Ste. 101  
Coeur d' Alene, ID 83814  
Phone: (208) 765-8188  
Moscow: (208) 883-0622  
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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BENEWAH

STATE OF IDAHO,	)	Case No. CR-2011-2053
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION IN LIMINE
	)	
JOSEPH D. HERRERA,	)	
	)	
Defendant.	)	

COMES NOW the defendant, by and through his attorney of record, and respectfully requests that the Court restrict the State from any attempt before the jury or any encouragement relative to the same concerning experimentation with or testing of anticipated firearm that was used to fire the bullet which struck and killed Stephanie Comack, on the grounds and for the reasons that it is improper for a jury to engage in any experiment or test, and that the gun is not in the same condition (not withstanding the removal of the firing pin) that it was on the day of the alleged murder.

Counsel acknowledges signing a "no objection" on a Motion to Disable Firearm on March 15, 2013. This is based upon counsel's telling Mr. Payne that he would not object to the removal of the firing pin during a telephone conversation of the same date. However, the conversation never mentioned anything about allowing the jury to "handle or operate the gun in considering the defense of accidental discharge." Rather,



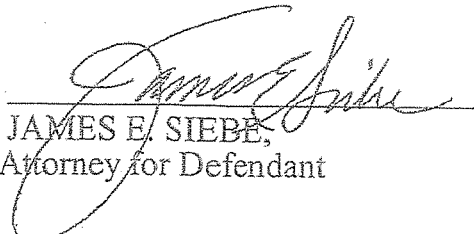
counsel understood that, in this case, as in any other firearm related case, the prosecution would have the gun admitted into evidence for it to be available to be handled by the jurors.

Counsel executed said Motion because he has no objection to the removal of the firing pin, but he does have an objection to the anticipated proposal that the State requests that the jury be allowed to experiment with the gun. In fact, counsel respectfully requests a jury instruction informing the jury that they are not to perform any such experiments.

Oral argument and leave to adduce testimony is hereby requested.

DATED this 18th day of March, 2013.

SIEBE LAW OFFICES, PLLC



JAMES E. SIEBE,  
Attorney for Defendant

CERTIFICATE OF SERVICE

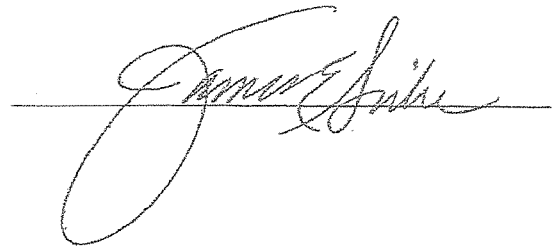
I hereby certify that on the 18th day of March, 2013, I served a true and correct copy of the foregoing document by the method indicated and addressed to the following:

Honorable Judge Gibler  
700 Bank Street  
P.O. Box 527  
Wallace, ID 83873

☐ U.S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile to: (208) 753-3581

Benewah County Prosecutor  
701 College St.  
St. Maries, ID 83861

☐ U.S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile to: (208) 245-1915

A handwritten signature in cursive script, appearing to read "James E. Sieb", is written over a horizontal line.

2013 MAR 19 PM 1:35

DOUGLAS PAUL PAYNE #4789  
Prosecuting Attorney  
Benewah County Courthouse  
St. Maries, Idaho 83861  
Telephone: 208-245-2564

BY: CZR DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BENEWAH

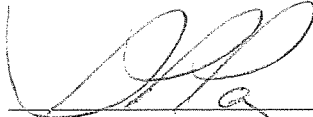
STATE OF IDAHO,	)	
	)	
Plaintiff,	)	
	)	Case No. CR11-2053
vs.	)	
	)	MOTION TO DISABLE
JOSEPH DUANE HERRERA,	)	FIREARM
	)	
Defendant.	)	
_____	)	

COMES NOW DOUGLAS PAUL PAYNE, Prosecuting Attorney for Benewah County, State of Idaho, and on behalf of the State hereby moves this Court for an order approving the disabling of the .380 pistol, which is evidence in this matter. This would be done by the Idaho State Police Crime Lab shortening or removing the firing pin or otherwise making it impossible for the gun to fire, while not changing the operation of the action or trigger.

This motion is based upon the stipulation of the parties and on the grounds that it would be helpful to the jury to be able to handle and operate the gun in considering the defense of

accidental discharge.

DATED this 15 day of March, 2013.



Douglas Paul Payne  
Prosecuting Attorney

NO OBJECTION:

---

James E. Siebe  
Attorney for Defendant

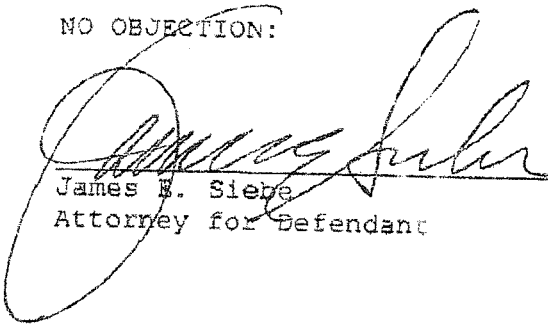
accidental discharge.

DATED this 15 day of March, 2013.



Douglas Paul Payne  
Prosecuting Attorney

NO OBJECTION:



James E. Siebe  
Attorney for Defendant

MOTION TO DISABLE FIREARM, Page - 2 -

PAGE 02

PROSECUTOR PROBATION

208-245-1915

03/15/2013 10:49

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2013 MAR 19 PM 1:35

DOUGLAS PAUL PAYNE #4789  
Prosecuting Attorney  
Benewah County Courthouse  
St. Maries, Idaho 83861  
Telephone: 208-245-2564

BY: CZR .DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BENEWAH

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	
	)	Case No. CR11-2053
vs.	)	
	)	ORDER APPROVING DISABLING
JOSEPH DUANE HERRERA,	)	OF FIREARM
	)	
Defendant.	)	
_____	)	

Based upon the State's Motion to Disable Firearm, and the defense having no objection, now, therefore,

IT IS HEREBY ORDERED that the State may disable the .380 pistol which is evidence herein, using due care to avoid otherwise altering the operation of the action or trigger.

DATED this 15 day of March, 2013.

Fred M Gibler  
Fred M. Gibler  
District Judge

I hereby certify that on the 19<sup>th</sup>  
day of March, 2013, a true  
and correct copy of the foregoing  
was delivered/mailed, postage prepaid,  
to:

Douglas Paul Payne  
Prosecuting Attorney  
Courthouse Mailbox  
St. Maries, Idaho

James E. Siebe  
Attorney at Law  
~~P.O. Box 9045~~ 608 Northwest Blvd, Ste 101  
~~Moscow, Idaho 83843~~  
Coeur d'Alene, ID 83814

By Carol Ryan  
Deputy Clerk

Time	Speaker	Note
<u>8:40:28 AM</u>	03/22/2013	Case No. CR2011-2053, State vs. Joseph Duane Herrera. Douglas Paul Payne, Prosecuting Attorney; James E. Siebe, Defense Attorney. Hearing: Status Conference.
<u>8:41:06 AM</u>		District Judge Fred M. Gibler presiding; Byrl Cinnamon, Court Reporter; Carol Ryan, Deputy Clerk.
<u>9:36:17 AM</u>	Judge	Calls case. Set for Status Conference. Set last Tuesday as we were not able to pick a jury. Made decision we are going to move the trial. Futile to attempt to select jury again in Benewah County.
<u>9:37:42 AM</u>		Will reset trial for June 11-14 in Kootenai County to continue June 18 and 19th.
<u>9:38:13 AM</u>		Other motions can be notice up in Benewah County at appropriate time. Venue is not being changed, just the trial. Excused.



FILED  
BENEWAH COUNTY

2013 APR -4 AM 11:25

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE DEPUTY  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BENEWAH

STATE OF IDAHO,	)	CASE NO.CV-2011-2053
	)	
Plaintiff,	)	ORDER SETTING TRIAL
	)	
vs.	)	
	)	
JOSEPH HERRERA,	)	
	)	
Defendant.	)	

It is hereby ordered that this case will be tried in  
Kootenai County on June 11-14 and June 18 and 19, 2013,  
commencing at 9:00am.

Dated this 4<sup>th</sup> day of April, 2013.

Fred M. Gibler  
FRED M. GIBLER, District Judge

CERTIFICATE OF MAILING

I hereby certify a true and correct copy of the foregoing was  
sent by facsimile or interoffice mail, this 4 day of April,  
2013, to the following:

Doug Payne, Benewah Prosecutor - Interoffice Mail ✓  
Jim Siebe: Fax - 208-882-8769 ✓  
Pete Barnes, Kootenai County - Interoffice Mail ✓  
Karlene Behringer, Kootenai County - Interoffice Mail ✓  
Emily Hamilton, Kootenai County Clerk - Fax: 208-446-1153 ✓

DEANNA BRAMBLETT, Clerk of Court

By: Dana Jones  
Secretary to Judge Gibler

ORDER SETTING TRIAL -1

STATE OF IDAHO } ss  
COUNTY OF KOOTENAI  
FILED: 1308-11-13  
AT 1:30 O'CLOCK PM  
CLERK DISTRICT COURT  
DEPUTY


DOUGLAS PAUL PAYNE #4789  
Prosecuting Attorney  
Benewah County Courthouse  
St. Maries, Idaho 83861  
Telephone: 208-245-2564

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BENEWAH

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	
	)	Case No. CR11-2053
vs.	)	AMENDED
	)	PROSECUTING ATTORNEY'S
JOSEPH DUANE HE [REDACTED]	)	INFORMATION
[REDACTED] [REDACTED]	)	
	)	
Defendant.	)	
	)	

DOUGLAS PAUL PAYNE, Prosecuting Attorney in and for Benewah County, State of Idaho, who, in the name and by the authority of said State prosecutes in its behalf, in proper person comes into said District Court in the County of Benewah, State of Idaho, on the 11th day of June, 2013, and gives the Court to understand and be informed that JOSEPH DUANE HERRERA is accused by this Information of the crime of MURDER IN THE SECOND DEGREE, a felony, in violation of Idaho Code Section 18-4001 and 18-4003(g), which has been committed by the said defendant as follows, to-wit: that the said JOSEPH DUANE HERRERA on or about the 25th day of December, 2011, in the County of Benewah, State of Idaho, did unlawfully and with malice aforethought, but without premeditation, kill Stephanie Comack, a human being, by willfully and deliberately pointing a

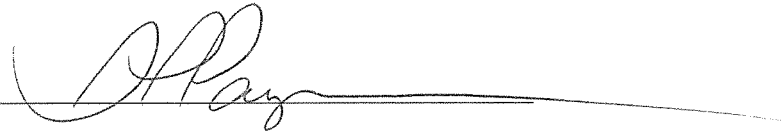
.380 handgun at her head and pulling the trigger, from which she died. All of which is contrary to the statute in such case made and provided and against the peace and dignity of the State of Idaho.

  
Prosecuting Attorney

I hereby certify that on the  
11th day of June, 2012,  
a true and correct copy of the  
foregoing was delivered/mailed,  
postage prepaid, to:

Jim Siebe  
~~William Butler~~  
Attorney at Law  
Courthouse Mailbox  
St. Maries, Idaho

By



State

Case #

Charge(s)

Benevolence County (Res)  
CR 2011-02053

Joseph Herrera

VS.

Date 6-11-13 Time 900

Courtroom # 1

Tape # NONE

Judge Corbler

Court Reporter

Burt Cinnamon

Type of Proceeding

Jury Trial

Counsel

Party

Plaintiff

Defendant

Douglas Payne

For

✓

James Siebe

For

For

For

✓

Identifier

Phase of Case

In Chambers meeting - July not present

DA Waive formal reading of information

PA State has filed Amended Complaint  
re: word "deliberate"

DA DO NOT object to Amended Complaint.  
Defendant does have medical issues - would  
like to start evidence tomorrow  
Confident case can go tomorrow

J will give opening instructions to jury today  
and begin opening statements tomorrow AM  
There is motion to exclude witnesses by  
defense

PA Only want the Comrak's and Officer Berg  
present

DA Withdraw 6/15 motion to exclude  
witnesses

Pg. \_\_\_\_\_

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Identifier	Phase of Case
9	Speculated motion by counsel to withdraw motion to exclude witnesses witnesses to be admonished by counsel

<b>Description</b>	Benewah County Case CR 2011-02053 Herrera, Joseph 20130611 Jury Trial Judge Gibler Clerk Emily Hamilton Court Reporter Byrl Cinnamon		
<b>Date</b>	6/11/2013	<b>Location</b>	1K-COURTROOM1
<b>Time</b>	<b>Speaker</b>	<b>Note</b>	
<u>09:06:30 AM</u>	Judge Gibler	Jury Trial--Day 1 Defendant is present, in custody	
<u>09:18:05 AM</u>		Excuses Jurors not available for jury service	
<u>09:18:32 AM</u>		Jury Panel informed of charge--Murder II--Not guilty plea has been entered to the charge	
<u>09:20:41 AM</u>		Beginning Jury	
<u>09:21:18 AM</u>	Clerk	Calls 38 jurors	
<u>09:37:12 AM</u>	Judge Gibler	Break now--admonishes jury	
<u>09:37:52 AM</u>	Judge Gibler	Back on record, all parties are present, entire jury is present	
<u>09:52:29 AM</u>		Explains Voir Dire process to jury panel	
<u>09:55:00 AM</u>	Clerk	Swears entire jury panel for Voir Dire Oath	
<u>09:55:18 AM</u>	Judge Gibler	Voir Dire to jury panel	
<u>10:25:13 AM</u>	Douglas Payne	Approach	
<u>10:25:25 AM</u>	Judge Gibler	Yes	
<u>10:26:02 AM</u>	Judge Gibler	Mr. Payne to state all witnesses to jury	
<u>10:27:51 AM</u>	Douglas Payne	Witnesses listed to jury	
<u>10:28:46 AM</u>	James Siebe	State additional witness to jury	
<u>10:29:10 AM</u>	Judge Gibler	Continues with Voir Dire to jury panel	
<u>10:33:32 AM</u>	Douglas Payne	Voir Dire to jury panel	
<u>10:51:08 AM</u>		Pass Panel for cause	
<u>10:51:14 AM</u>	Judge Gibler	Break now, admonishes entire jury panel	
<u>11:05:19 AM</u>		Case is recalled, all present, jury all present	
<u>11:05:34 AM</u>	James Siebe	Voir Dire to jury panel	
<u>11:29:10 AM</u>		Pass panel for cause	
<u>11:29:15 AM</u>	Judge Gibler	We will do challenges in chambers now	
<u>11:29:29 AM</u>		Recess--all jurors are admonishes entire jury	
<u>11:29:52 AM</u>		Return at 12:45 today--all jurors must return at 12:45	
<u>11:30:53 AM</u>	Judge Gibler	Case is recalled, all parties present, jury is present	
<u>12:47:33 PM</u>		14 jurors have been selected	

*C. M. H. C.* Page 227

<u>12:50:09 PM</u>	Douglas Payne	Jury selected properly
<u>12:50:15 PM</u>	James Siebe	Jury selected properly
<u>12:51:02 PM</u>	Judge Gibler	Swears selected 14 jurors for Try Cause Oath
<u>12:51:30 PM</u>		Excuses jurors not selected
<u>12:51:57 PM</u>	James Siebe	Waive formal reading of the Information
<u>12:52:37 PM</u>		Opening jury instructions given to jury
<u>01:04:07 PM</u>		You are excused for the day--there are 2 alternates-- alternates will be picked at end of all evidence in case
<u>01:04:37 PM</u>		Return tomorrow 9am Courtroom 14

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<b>Description</b>	Benewah County Case CR 2011-2053 Herrera, Joseph 20130612 Jury Trial Judge Gibler Clerk Emily Hamilton Court Reporter Byrl Cinnamon		
<b>Date</b>	6/12/2013	<b>Location</b>	1K-COURTROOM14
<b>Time</b>	<b>Speaker</b>	<b>Note</b>	
<u>09:12:36 AM</u>	Judge Gibler	Jury Trial Day 2--Defendant is present, in custody	
<u>09:12:43 AM</u>	James Siebe	Approach	
<u>09:12:49 AM</u>	Judge Gibler	Yes	
<u>09:12:54 AM</u>		Recall Jury--all present	
<u>09:13:09 AM</u>	Douglas Payne	Opening Statements to given to jury	
<u>09:15:28 AM</u>	James Siebe	Approach	
<u>09:15:34 AM</u>	Judge Gibler	Yes	
<u>09:16:57 AM</u>	Douglas Payne	Continue with opening statements to jury	
<u>09:22:20 AM</u>	James Siebe	Opening statement given to jury	
<u>09:30:59 AM</u>	Douglas Payne	Call Ronald Dickerson	
<u>09:31:04 AM</u>	Ronald Dickerson	Sworn for testimony, reside in St Maries 18 years, work at Pot Latch Mill, also an advanced emt for 14 years	
<u>09:31:45 AM</u>		Recall Christmas day 2011. I was at home when got the call. Shortly before noon. Took me about 5 minutes to get to scene. House was in St. Maries in Benewah County across from school. Typical home in St. Maries. We should up, a lot of law enforcement there already. We were escorted up stairs to the patient. The other emt with us knew who it was. My partner was first to look at her. She was close with victim and so she turned it over to me. Bullet shot to the head, point blank. She was unresponsive, difficulty breathing. A blanket was over her. A shell casing did bounce up of the bed. She was laying to left of the bed. I gave shell casing to detective. I started working on her and quickly took her to hospital. She was in grave condition. We stayed at the hospital helping several hours	
<u>09:36:13 AM</u>	Douglas Payne	Nothing	
<u>09:36:16 AM</u>	James Siebe	Nothing	
<u>09:36:22 AM</u>	Judge Gibler	Excuse witness	
<u>09:36:29 AM</u>	Douglas	Call Detective Robert Lowe	



	Payne	
<u>09:37:03 AM</u>	Robert Lowe-- Detective	Sworn for testimony, 27 years officer for Benewah County, post certified for 26 years
<u>09:37:53 AM</u>		I was off duty when incident occurred on Christmas day 2011. I heard on my radio, gun shot wound at home in St. Maries. I stopped and got my gun and badge on and went to scene. I got there before Mr. Dickerson. I knew the address was the Hererra house. I drove up and heard Joe screaming. He ran to me and screamed for me to help him because he shot his girlfriend. His dad showed me into the house. I went up the stairs
<u>09:40:24 AM</u>		Stephanie was left to bed. She was gasping. Jeri had a towel on her head. A neighbor was also in the room. I asked what happened. Jeri said Stephanie had been shot. I asked where the gun was. She told me she put gun at other end of house on windowsill. I was concerned where the gun was. I went and got the gun and put it in my shirt and buttoned my shirt. Deputy Richardson arrived, we both went to Stephanie. He took a video of the scene. I was at scene until 8pm that night. Joseph told me he had shot Stephanie. I asked him what happened. He told me he had accidentally shot her in head.
<u>09:43:41 AM</u>		Another person was with him while I was talking with him trying to calm him down. He was totally hysterical. He was screaming
<u>09:44:08 AM</u>		He said he was trying to unload gun and it went off
<u>09:44:44 AM</u>		There were 10-15 people standing out in front of house
<u>09:45:39 AM</u>		Emit's arrived and I helped them carry stretcher. The bed had been shoved so they had more room to work on her. Mr. Dickerson said he found the magazine and handed it to me
<u>09:48:16 AM</u>	Douglas Payne	Mark exhibit 2
<u>09:48:25 AM</u>	Robert Lowe-- Detective	Identifies exhibit 2--gun
<u>09:49:42 AM</u>	Douglas Payne	Admit exhibit 2----Publish to jury
<u>09:49:49 AM</u>	Judge Gibler	Mr. Siebe has no objection to exhibit 2--Admit exhibit 2--yes publish to jury
<u>09:49:53 AM</u>	Robert Lowe-- Detective	We stayed in residence and talked with Herrera They allowed us upstairs to look around. There was an open drawer and there were 2 more magazines and drug para in drawer. We took items to patrol car to keep them in evidence. I have seen many pipes and para

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<u>09:52:11 AM</u>	James Siebe	We stipulate that he saw meth pipe
<u>09:52:34 AM</u>	Robert Lowe-- Detective	
<u>09:54:23 AM</u>	Douglas Payne	Mark exhibit 3
<u>09:54:29 AM</u>	Robert Lowe-- Detective	Identifies exhibit 3 as shell casing
<u>09:54:42 AM</u>	Douglas Payne	Admit exhibit 3
<u>09:54:45 AM</u>	James Siebe	No objection to exhibit 3
<u>09:55:15 AM</u>	Judge Gibler	Admit exhibit 3
<u>09:55:40 AM</u>	Douglas Payne	Publish to jury
<u>09:55:46 AM</u>	Judge Gibler	yes
<u>09:55:50 AM</u>	Robert Lowe-- Detective	Comack family did arrive on scene. I saw Susie Comack and some children. They jumped out of car and started screaming at Joe. I went out of house and met them as they stepped into yard, Jack was there along with Tiffany. They were very angry. Susie was yelling she was going to kill Joe. I stopped Susie. I told Susie to go to hospital, they eventually complied. I heard another vehicle coming down street. It was Stephanie's Dad. He was screaming he was going to kill Joe, Jerri and Jesse and he was going to kill everybody. I did persuade him to go to hospital. We went back to house and Joe was gone
<u>09:59:44 AM</u>		We did get written statements from Jerri and Jesse
<u>10:00:31 AM</u>	Douglas Payne	Nothing more
<u>10:00:35 AM</u>	James Siebe	Cross exam
<u>10:00:44 AM</u>	Robert Lowe-- Detective	I was off duty. Officer Dickenson was taking someone to jail at the time. He did show up at scene after he took prisoner. I didn't know it was Herrera's house until I got close. I knew Joe and his folks. He told me he shot Stephanie and he was hysterical and he was screaming. He didn't run away. He voluntarily spoke with me. It was emotional scene. I did know both families very well. I did not record Joe. I did not read him his rights. I picked up shell casing. The clip was laying on floor and Officer Castle picked it up. I saw it was lowing. I heard someone tell Joe he better leave. Comack family was very upset when arrived. Jack had a gun. Susie was threatening to kill Joe. Jim Comack said he was going to kill Joe and his family. I know Dan Arlt. It was reported that Mr. Arlt had broken

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		out Joe's windows on two occasions. I did investigate both times. I never interviewed Mr. Arlt. He is 6'4 or 6'5 and 200 lbs.
<u>10:06:17 AM</u>		As to this case--I filed a narrative report on Stephanie. The report was headed Homicide --Negligent manslaughter. There was a request to go talk with St. Maries police. I was told the charge would be Involuntary manslaughter
<u>10:07:52 AM</u>	James Siebe	Nothing more
<u>10:07:57 AM</u>	Douglas Payne	Re direct
<u>10:08:03 AM</u>	Robert Lowe-- Detective	Not my intention to express the correct conclusion of the charge. I was told the charge would be negligent
<u>10:08:32 AM</u>	James Siebe	Object
<u>10:08:36 AM</u>	Judge Gibler	Sustained
<u>10:08:41 AM</u>	Douglas Payne	Nothing more
<u>10:08:45 AM</u>	James Siebe	Nothing more
<u>10:09:05 AM</u>	Douglas Payne	Call Deputy Richardson
<u>10:09:16 AM</u>	Michael Richardson-- Deputy	Sworn for testimony, 10 years as officer, post certified
<u>10:09:41 AM</u>		I was on call the date of this incident. I was at home. It took me 10 minutes to get to Herrera house. Sgt. Dickenson was there. I went upstairs. I turned on recording as soon as I got out of my car. Stephanie was in upstairs bedroom
<u>10:11:15 AM</u>		2 story house with basement. Upstairs was converted attic.
<u>10:11:44 AM</u>		Joe's father pointed at the stairs and said she is up there. I went upstairs and assessed the scene for my safety. Detective Lowe advised me he had secured the gun
<u>10:12:40 AM</u>		2 people were kneeling by Stephanie. She had labored breathing, real raspy. I observed her laying and observed a magazine by her feet. A magazine is for a semi automatic pistol
<u>10:13:47 AM</u>		It was a 34 or 38 caliber. Her head was soaked in blood and was covered with a towel. The persons there had placed her head on a pillow. I advised not to move her. The emts did show up. After we brought her downstairs, I could hear Joe yelling, I didn't mean to do it, I didn't mean to shoot her. I was there when Comack's arrived. I helped carry Stephanie down the stairs. Her brother showed up shortly after ambulance had left. Joe was in front yard when her brother showed up. I placed

		myself between the vehicle and Joe's family. Dickerson went to Stephanie's brother and removed the gun. I heard a lot of screaming. Her father showed up next after her brother left. I walked towards his vehicle and we kept him by his vehicle. I didn't notice Joe left. I noticed after Mr. Comack left to go to hospital
<u>10:18:12 AM</u>		Joe's father was afraid Joe went back into house to hurt himself. We went to look. We went to hospital to look for him to intercept him if that was where he went. He did not arrive at hospital
<u>10:19:01 AM</u>	Douglas Payne	Break now
<u>10:19:07 AM</u>	Judge Gibler	Break--admonish jury
<u>10:19:24 AM</u>		Case is recalled, all parties are present, jury is out
<u>10:45:24 AM</u>		State seeks to admit exhibit 1
<u>10:45:35 AM</u>	Douglas Payne	Yes, admit exhibit 1
<u>10:46:03 AM</u>	James Siebe	Stipulation for exhibit 1
<u>10:46:10 AM</u>	Judge Gibler	Stipulation to begin at certain point on video, Admit exhibit 1
<u>10:46:47 AM</u>		Recall jury-- all present
<u>10:47:23 AM</u>	Douglas Payne	Continue with direct exam
<u>10:47:33 AM</u>	Michael Richardson--Deputy	This exhibit 1 is video I made from camera on my person. Pinhole camera, it is activated by pressing button. I made recording Christmas day 2011.
<u>10:48:54 AM</u>	Douglas Payne	Allow jury to see video now
<u>10:49:13 AM</u>	Judge Gibler	It has been stipulated to
<u>10:49:22 AM</u>	Douglas Payne	Plays video for jury
<u>10:53:36 AM</u>		Courtroom outburst--jury sent out
<u>11:11:34 AM</u>	Judge Gibler	Case is recalled, all parties present
<u>11:11:48 AM</u>		Jury is recalled, all present
<u>11:12:17 AM</u>		Unexpected interruption, causing some re grouping here.
<u>11:12:28 AM</u>		Excuse you for lunch now
<u>11:12:43 AM</u>		Return at 1230pm today--admonishes jurors
<u>12:32:18 PM</u>		Case is recalled, all parties present, jury is out, interruption in courtroom before break--It was Mr. Comack. Understand his emotions to this, this was not the first time this has happened. I

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	Judge Gibler	have instructed him in past that it can not be tolerated. I have reluctantly ordered, Mr. Comack will not be allowed to participate in the proceedings. It is with reluctance, he is the father of the deceased. To the other members of the Comack family--I would have to ask you to leave if any outbursts by you, and I really do not want to do that
<u>12:34:06 PM</u>		We will begin exhibit 1 at beginning again
<u>12:34:15 PM</u>		Recall the jury--all present
<u>12:34:56 PM</u>		The court reporter does not need to take down the video, neither does back up system.
<u>12:35:25 PM</u>		Instruct the jury to disregard the interruption earlier. Put it out of your mind and not let it affect you in any way
<u>12:35:49 PM</u>	Douglas Payne	Begins playing exhibit 1--off record
<u>12:43:48 PM</u>	Judge Gibler	Back on record
<u>12:44:51 PM</u>	Michael Richardson--Deputy	After video, we went to hospital to look for Joe. We saw physician on scene
<u>12:45:26 PM</u>	Douglas Payne	That's all I have
<u>12:45:34 PM</u>	James Siebe	No questions, do not want witness excused. I may need to call him next week
<u>12:45:46 PM</u>	Judge Gibler	Release today, may need you here next week.
<u>12:46:30 PM</u>	Douglas Payne	Call Srgt. Dickenson
<u>12:47:07 PM</u>	Rodney Dickenson Srgt	Sworn for testimony, officer since 1998 with Benewah County entire time, I am post certified since 1999
<u>12:47:33 PM</u>		Christmas day this incident I was on way to jail with person in custody, I got call, dropped off prisoner and went to scene. Took me not more than 5 minutes to get to residence of incident
<u>12:48:39 PM</u>		Det. Lowe was in front yard with several people, one was Joe. Joe kept yelling out--oh my god, I heard him tell someone else that he was playing with gun and it just went off and he didn't mean to shoot her. I took a gun from Jack Comack, Stephanie's brother
<u>12:49:42 PM</u>		I also had a video. It is scorpion video. I turned video on when I left car and was walking to yard. I was looking for Joe, I did go to hospital to find Joe. Turned video off when drove to hospital. Ford Explorer was missing
<u>12:51:42 PM</u>	Douglas	

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	Payne	Mark exhibit 4
<u>12:51:51 PM</u>	Michael Richardson--Deputy	Exhibit 4 is video of me on front lawn
<u>12:51:59 PM</u>	Douglas Payne	Admit exhibit 4 and play to jury
<u>12:52:08 PM</u>	James Siebe	No objection to exhibit 4
<u>12:52:14 PM</u>	Judge Gibler	Admit exhibit 4 and you may play to jury
<u>12:52:25 PM</u>		Court reporter and back up does not need to take this down
<u>01:07:53 PM</u>		Back on record
<u>01:08:53 PM</u>	Michael Richardson--Deputy	I headed to hospital looking for Joe and to check on Stephanie
<u>01:09:16 PM</u>	Douglas Payne	That is all I have
<u>01:09:22 PM</u>	James Siebe	Cross exam
<u>01:09:30 PM</u>	Michael Richardson--Deputy	I went to hospital in case Joe had gone there and to check on Stephanie
<u>01:09:57 PM</u>		I made a written report about this
<u>01:10:07 PM</u>	James Siebe	No further questions, do not need him
<u>01:10:20 PM</u>	Judge Gibler	Excuses witness
<u>01:10:47 PM</u>		Call Deputy Castle
<u>01:10:56 PM</u>	Scott Castles--Deputy	Sworn for testimony, employed by Benewah County, prior, St. Maries police--7 years as officer, post certified
<u>01:11:28 PM</u>		Christmas 2011 I was on duty. I got call, it took about 6 minutes to arrive. Other officers were already there. I was to secure scene and take pictures and account for who went in and out of residence. I searched residence. I saw magazine in upstairs bedroom on the floor--north end of the bedroom. I could tell where Stephanie was laying. There was pool of blood. The blood was closest to the door. I secured the magazine. I was gathering evidence. Detective Lowe gave me handgun
<u>01:14:16 PM</u>		Plaintiff exhibit 2 and 3 are what I collected. Gave gun to officer
<u>01:15:54 PM</u>	Douglas Payne	Shows exhibit 80
<u>01:16:17 PM</u>	Scott Castles--	Identifies exhibit 80--magazine

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	Deputy	
<u>01:16:19 PM</u>	Douglas Payne	Admit 80
<u>01:16:26 PM</u>	James Siebe	No objection to exhibit 80
<u>01:16:39 PM</u>	Judge Gibler	Exhibit 80 is admitted
<u>01:17:07 PM</u>	Douglas Payne	Show exhibits 5-9 photos
<u>01:17:16 PM</u>	Scott Castles-- Deputy	Identifies exhibits 5-9--photos--I took the photos
<u>01:18:14 PM</u>	Douglas Payne	Admit exhibits 5-9
<u>01:18:23 PM</u>	James Siebe	No objection to 5-9
<u>01:19:26 PM</u>	Judge Gibler	Exhibits 5-9 are admitted
<u>01:20:09 PM</u>	Scott Castles-- Deputy	I
<u>01:20:15 PM</u>	Douglas Payne	Nothing else
<u>01:20:20 PM</u>	James Siebe	Cross exam
<u>01:20:28 PM</u>	Scott Castles-- Deputy	I was there when Mr. Comack showed up. I wrote report and it was true and accurate. He was driving reckless and Lowe had informed Officers he may be armed. I told Joe to go. I meant to go in the house. I was concerned for his safety. I never suspected he was fleeing the scene. I spoke with Derrick Barden, Joe's friend. I asked him to find Joe and make sure he was safe
<u>01:22:29 PM</u>		I was employed with St Maries Police report was on there form. I filed report the day after the incident. Report type--Homicide and negligent manslaughter--I don't remember I would like to look at report. Yes that is correct
<u>01:23:37 PM</u>	James Siebe	Nothing more
<u>01:23:44 PM</u>	Douglas Payne	Re direct
<u>01:23:50 PM</u>	Scott Castles-- Deputy	
<u>01:23:52 PM</u>	James Siebe	Object
<u>01:23:56 PM</u>	Judge Gibler	Restate questions
<u>01:24:02 PM</u>	Scott	

	Castles-- Deputy	No intentions as to charges today
<u>01:24:06 PM</u>	James Siebe	Object
<u>01:24:11 PM</u>	Judge Gibler	Overruled
<u>01:24:16 PM</u>	Scott Castles-- Deputy	The name of the report--it is a drop down that I click on
<u>01:24:31 PM</u>		The magazine, I didn't find other lose cartridges
<u>01:24:45 PM</u>	Douglas Payne	Noting
<u>01:24:50 PM</u>	James Siebe	Nothing
<u>01:24:55 PM</u>	Douglas Payne	Call Jeri Herrera
<u>01:25:25 PM</u>	Jeri Herrera	Sworn for testimony, I am Joseph's mother, he is 29. He lived with me at time of incident. Stephanie was staying there also. They lived upstairs Joseph is right handed. I heard a bang. I ran upstairs and said what the hell was that noise. He was in standing in front of the door where the bed was. He had gun in hand. He was waiving his hands, and said he shot Stephanie. He was in hysterics
<u>01:27:38 PM</u>		He did point gun at himself. I recall writing statement. He was waiving the gun everywhere. I was scared gun was going to go off again
<u>01:28:25 PM</u>		He threw the gun on the floor. I picked it up and set it on windowsill. I stayed with Stephanie. It seemed like it took awhile for ambulance. Husband called 911
<u>01:29:32 PM</u>	Douglas Payne	Nothing more
<u>01:29:39 PM</u>	James Siebe	Cross exam
<u>01:30:00 PM</u>	Jeri Herrera	I am employed. I am manager of Nursing Home in St. Maries. I have worked there for 21 years. I did talk to Stephanie on a couple of occasions. I talked to her twice that I remember. I got along with her
<u>01:31:06 PM</u>	James Siebe	Nothing
<u>01:31:13 PM</u>	Douglas Payne	Nothing
<u>01:31:18 PM</u>		Call Jesse Herrera
<u>01:31:41 PM</u>	Jesse Herrera	Sworn for testimony. Joseph is my son. I heard shot also. I ran up to stairs. Wife yelled down to call 911 so I called 911
<u>01:33:11 PM</u>		Exhibit 2 is my gun. Had it for 15 years about. It had been along time since I had seen it. Never knew it was gone. Never

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		gave Joe permission to have it. I seen the pistol the day it happened. Bob Lowe had it. I recognized it as same pistol
<u>01:34:36 PM</u>		I had 25 pistol also in a dresser drawer. I didn't know it was gone. I hadn't given it to Joe. After Comacks came, I couldn't find Joe. I noticed my car was gone so I knew Joseph had taken it. Bob told us Joe was with that Daren fellow. My younger son brought my car back. Joe just took my car
<u>01:36:57 PM</u>	Douglas Payne	Nothing more
<u>01:37:04 PM</u>	James Siebe	Cross exam
<u>01:37:11 PM</u>	Jesse Herrera	I had let him use car before and I still leave keys under floor mat in vehicle
<u>01:37:32 PM</u>	Judge Gibler	Break now for 15 minutes--admonishes jury
<u>01:37:53 PM</u>		Case is recalled, all present
<u>02:01:28 PM</u>		Jury recalled, all present
<u>02:02:06 PM</u>	Douglas Payne	Recall Jeri Herrera
<u>02:02:17 PM</u>	Jeri Herrera	Understand still under oath. Joe called me on his cell phone after he left scene. He was frantic. He called a couple times. I told him to come back and go to police and tell them what happened. He did. We had multiple conversations before he came back. He told me he was up in mountains
<u>02:03:28 PM</u>	Douglas Payne	Nothing more
<u>02:03:29 PM</u>	James Siebe	Cross exam
<u>02:03:35 PM</u>	Jeri Herrera	He was concerned for his safety and we were also
<u>02:03:46 PM</u>	Douglas Payne	Call Chief
<u>02:04:30 PM</u>	Chief Lehmbecker	Sworn for testimony, Chief of police in St Maries for 3 years, In law enforcement for 22 years
<u>02:05:11 PM</u>		Bob called me on 12/25/11--I learned of shooting. I drove to the scene
<u>02:05:45 PM</u>		Raymond Roy And Derrick brought Joseph to police department where I was
<u>02:06:11 PM</u>		I got back to police about 515pm
<u>02:06:55 PM</u>		Interview was with myself and Joseph, ISP Officer Berger did come into interview within 12 minutes
<u>02:07:49 PM</u>		This is cd audio I made, it is true and accurate
<u>02:08:04 PM</u>	Douglas Payne	Admit exhibit 10

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<u>02:08:11 PM</u>	James Siebe	No objection to exhibit 10
<u>02:08:28 PM</u>	Judge Gibler	Admit exhibit 10--can play to jury, court reporter and back up do not need to take down
<u>02:27:46 PM</u>		Back on record
<u>02:28:13 PM</u>	Douglas Payne	continue direct exam
<u>02:28:26 PM</u>	Chief Lehmbecker	During interview with defendant we were both standing. I asked him to show me where Stephanie was using me
<u>02:29:38 PM</u>		Show's jury
<u>02:29:47 PM</u>	James Siebe	Object
<u>02:30:12 PM</u>	Judge Gibler	Sustained--she can just show jury the motions made
<u>02:30:31 PM</u>	Chief Lehmbecker	He said he was pulling back the slide of the gun at his waste. He said he pulled back the slide and the gun went off. He showed the gun at his waste. Detective Berger came in and noticed
<u>02:32:09 PM</u>	James Siebe	Object
<u>02:32:16 PM</u>	Judge Gibler	Overruled
<u>02:32:21 PM</u>	Chief Lehmbecker	When Detective Berger came in I stayed in room and he began recording. After the interview Joseph was arrested
<u>02:32:57 PM</u>	Douglas Payne	Nothing more
<u>02:33:06 PM</u>	James Siebe	Cross exam
<u>02:33:26 PM</u>	Chief Lehmbecker	I had been told of concern for Joe's safety. Raymond Roy and Derrick Barden was with Joe when they came to station. Derrick was a friend of Joe's. Derrick brought Joseph to the police station. I started recording at 548 correct. I began recording as soon as they got to station. I started recording the moment they pulled up. I understood Joe was coming to station. Joseph was brought to police department by Derrick Barden and Raymond Roy. We were looking for him. The plan was for Derrick and Raymond to bring him in.
<u>02:36:51 PM</u>		I did talk to Derrick at the scene and told him to try to find him. I had heard an officer told Joe to leave scene because of Comack coming by. Attempt to locate was to talk to him. He was not under arrest when I talked to him. I read him his rights.
<u>02:38:17 PM</u>		Joe did say I cant remember if had hand on trigger
<u>02:38:33 PM</u>		He demonstrated how he was holding the gun and he slid it
<u>02:39:36 PM</u>		I asked him to use me to show me where Stephanie was standing and then he demonstrated to me how gun went off
<u>02:41:29 PM</u>	James Siebe	No further questions

<u>02:41:36 PM</u>	Douglas Payne	Nothing more
<u>02:41:46 PM</u>	Judge Gibler	Break for today--return 9am tomorrow--admonishes jurors-- jurors not to watch tv or newspaper accounts of this

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<b>Description</b>	Benewah County Case 2011-2053 Herrera, Joseph 20130618 Jury Trial Judge Gibler Clerk Emily Hamilton Court Reporter Anita Self		
<b>Date</b>	6/18/2013	<b>Location</b>	1K-COURTROOM14
<b>Time</b>	<b>Speaker</b>	<b>Note</b>	
<u>09:27:44 AM</u>	Judge Gibler	Jury Trial--Day 4 Defendant is present, in custody, jury is out	
<u>09:27:54 AM</u>	James Siebe	Have 803 3 rule issue--state of mind issue, different events--all don't go to a particular state of mind	
<u>09:30:33 AM</u>	Judge Gibler	Prior ruling stands, you have made your record	
<u>09:30:43 AM</u>		Ms. McEwen still on stand still under oath, recall jury	
<u>09:31:30 AM</u>	Ms. McEwen	Understand still under oath	
<u>09:31:51 AM</u>	Judge Gibler	Jury has returned	
<u>09:31:57 AM</u>	James Siebe	Cross exam of Ms. McEwen	
<u>09:32:10 AM</u>		Yes, I met Stephanie in first grade. We did attend all high school years together	
<u>09:32:38 AM</u>	Ms. McEwen	I was aware she was dating defendant in October or December of 2011	
<u>09:33:22 AM</u>		She did tell me she broke up with Joseph. She said shifter, I don't think there is one anywhere else then in a car. I talked to her 1 week before she died. I did say prior 2-3 weeks before she died.	
<u>09:34:59 AM</u>	James Siebe	Nothing more	
<u>09:35:07 AM</u>	Douglas Payne	Re direct	
<u>09:35:12 AM</u>	Ms. McEwen	I did tell her mom about the shifter in the car. She asked me not to tell anyone, to keep it secret. We confided a lot with each other. I was worried is why I told her	
<u>09:35:52 AM</u>	Douglas Payne		
<u>09:35:54 AM</u>	James Siebe	Re cross	
<u>09:36:02 AM</u>	Ms. McEwen	I waited a week to tell her mom	

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<u>09:36:41 AM</u>	Douglas Payne	Call Bobbie Riddle
<u>09:37:12 AM</u>	Bobbie Riddle	Sworn for testimony, reside in Fernwood. Known Stephanie her whole life. Talked with her on and off. Saw her a lot in 2011. Spoke about Joe with her. She did talk about breaking up with Joe
<u>09:38:15 AM</u>	James Siebe	Object
<u>09:38:19 AM</u>	Judge Gibler	Sustained
<u>09:38:27 AM</u>	Bobbie Riddle	Conversation took place at her Dad's house. She told me probably in December. It was just me and her
<u>09:38:57 AM</u>		
<u>09:39:00 AM</u>	James Siebe	Object
<u>09:39:06 AM</u>	Judge Gibler	Allow in not for the truth, only relevance of the state of mind of Stephanie Comack
<u>09:39:32 AM</u>	Bobbie Riddle	She was leaving him. She started talking about it. She said he sometimes got mean, she said he slapped her around, choked her
<u>09:40:34 AM</u>	James Siebe	Approach
<u>09:40:40 AM</u>	Judge Gibler	Yes--in chambers
<u>09:44:09 AM</u>		Statements about slapping and choking--Jury instructed to disregard and not rely on in any way for deliberation]
<u>09:44:48 AM</u>	Bobbie Riddle	
<u>09:44:54 AM</u>	James Siebe	Object
<u>09:45:01 AM</u>	Judge Gibler	You need to be more pointed in your question
<u>09:45:13 AM</u>	Bobbie Riddle	Just me and Stephanie were talking
<u>09:45:26 AM</u>	Judge Gibler	Counsel to approach
<u>09:46:08 AM</u>	Bobbie Riddle	2011 September, she told me should would try to break up with Joe and he threatened to kill himself. It was more than once
<u>09:46:38 AM</u>	James Siebe	Cross exam

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<u>09:47:44 AM</u>		I was James Comack's girlfriend at the time. I had conversation with Stephanie in 2011. I did testify prior. I said talking with her was very short. Conversation was at James Comack's house.
<u>09:48:28 AM</u>	Bobbie Riddle	Reads part of transcript to jury. I did tell James Comack of the conversation with Stephanie. She told me she thought she was in love with Joe
<u>09:50:22 AM</u>	James Siebe	Nothing more
<u>09:50:27 AM</u>	Douglas Payne	Re direct
<u>09:50:33 AM</u>	Bobbie Riddle	I saw one message on phone about Joe killing himself, yes
<u>09:51:51 AM</u>	James Siebe	Approach
<u>09:51:59 AM</u>	Judge Gibler	Yes
<u>09:52:03 AM</u>		Instructs jury to disregard any text message statements
<u>09:52:24 AM</u>	James Siebe	Object
<u>09:52:34 AM</u>	Judge Gibler	Overruled
<u>09:52:37 AM</u>	Bobbie Riddle	I had message on my phone from Joe. Stephanie told me it was Joe
<u>09:53:06 AM</u>	Judge Gibler	Objection is sustained
<u>09:53:14 AM</u>		Jury is to disregard the testimony on this subject
<u>09:53:32 AM</u>	Douglas Payne	Nothing more
<u>09:53:39 AM</u>		Call Dr. Sally Aiken
<u>09:53:43 AM</u>	Dr. Sally Aiken	Sworn for testimony, Spokane County Medical Examiner since 1991
<u>09:56:03 AM</u>		Reviews education and training to jury
<u>09:57:45 AM</u>		Doing autopsy since 1989--performed more than 7000, examined a good number of gun shot wounds
<u>09:58:47 AM</u>		Reviews exhibit 87--autopsy report on Stephanie Comack that I prepared
<u>10:00:12 AM</u>		Did autopsy 12/27/11--cause of death--gun shot wound to the head
<u>10:01:04 AM</u>		Reviews exhibits 61, 62, 63--photos of the body of Stephanie Comack

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<u>10:02:34 AM</u>		Identifies 61-63
<u>10:02:41 AM</u>	Douglas Payne	Admit 61-63
<u>10:02:52 AM</u>	James Siebe	No objection to 61-63
<u>10:03:05 AM</u>	Judge Gibler	61-63 are admitted
<u>10:03:14 AM</u>	Dr. Sally Aiken	Identifies exhibit 64-65--photos
<u>10:05:08 AM</u>		In 64 and 65--indicates a contact wound--it is a contact gunshot wound.
<u>10:05:39 AM</u>		The muzzle of the firearm was in contact with the firearm when it was discharged in this case
<u>10:05:56 AM</u>		Identifies exhibits 66 and 67--photos
<u>10:06:32 AM</u>	Douglas Payne	Admit exhibits 64-67
<u>10:06:42 AM</u>	James Siebe	No objection to 64-67
<u>10:07:20 AM</u>	Judge Gibler	64-67 are admitted
<u>10:07:36 AM</u>	Dr. Sally Aiken	Identifies exhibit 68-71 photos
<u>10:10:31 AM</u>	Douglas Payne	Admit 68-71
<u>10:10:38 AM</u>	James Siebe	No objection to 68-71
<u>10:10:49 AM</u>	Judge Gibler	Admit exhibits 68-71
<u>10:11:35 AM</u>	Dr. Sally Aiken	Identifies exhibits 72-73 photos
<u>10:14:08 AM</u>	Douglas Payne	Admit 72-73
<u>10:14:19 AM</u>	Judge Gibler	Exhibits 72-73 are admitted--no objection by James Siebe
<u>10:14:34 AM</u>	Dr. Sally Aiken	Identifies exhibit 74, 76 and 77
<u>10:15:57 AM</u>	Douglas Payne	Admit 74, 76 and 77
<u>10:15:59 AM</u>	James Siebe	No objection to 74, 76 and 77

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<u>10:16:01 AM</u>	Judge Gibler	74-76 and 77 are admitted
<u>10:18:15 AM</u>	Dr. Sally Aiken	Identifies 75, 78-79
<u>10:18:58 AM</u>	Douglas Payne	Admit 75, 78-79
<u>10:19:04 AM</u>	James Siebe	No objection to 75, 78 and 79
<u>10:19:08 AM</u>	Judge Gibler	Exhibits 75 and 78 and 79 are admitted
<u>10:19:53 AM</u>	Dr. Sally Aiken	I have no doubt this was gunshot contact wound
<u>10:20:28 AM</u>	Douglas Payne	Admit exhibit 87 autopsy report
<u>10:20:37 AM</u>	James Siebe	Approach
<u>10:20:42 AM</u>	Judge Gibler	Yes
<u>10:23:39 AM</u>	James Siebe	No object to exhibit 87
<u>10:24:21 AM</u>	Judge Gibler	Exhibit 87 is admitted
<u>10:24:30 AM</u>	Dr. Sally Aiken	Perform toxicology on every autopsy we do
<u>10:25:07 AM</u>		We did bac--negative
<u>10:25:14 AM</u>		Complete drug test was done by lab
<u>10:25:44 AM</u>		I looked at tissue under microscope. I did collect evidence during autopsy. I don't order the testing of those.
<u>10:26:10 AM</u>		I examined her fingernails and submitted them. I didn't see anything under her nails. She did have pink finger nail polish on
<u>10:26:54 AM</u>		Didn't see any pieces of flesh under the fingernails
<u>10:27:10 AM</u>	James Siebe	Strike
<u>10:27:16 AM</u>	Judge Gibler	Disregard anything other than last response of this witness
<u>10:27:33 AM</u>	Dr. Sally Aiken	I did see positive drug compounds--Verdess and meth and amphetamine
<u>10:29:43 AM</u>		Didn't see any stipple marks
<u>10:29:50 AM</u>		I saw no pattern of the muzzle--not unusual

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<u>10:30:02 AM</u>	James Siebe	Strike
<u>10:30:09 AM</u>	Judge Gibler	Jury to disregard
<u>10:30:34 AM</u>	Dr. Sally Aiken	Confirmed soot on bone from microscope
<u>10:31:27 AM</u>	James Siebe	No further questions
<u>10:31:33 AM</u>	Douglas Payne	Re direct
<u>10:31:38 AM</u>	Dr. Sally Aiken	No stipple marks--they are not seen unless there is a distance. Not expected to see in contact wound
<u>10:32:13 AM</u>		Muzzle imprint mark maybe present in this case. I have not seen the firearm in this case
<u>10:32:43 AM</u>		I wouldn't expect to see stipple marks in contact gun shot wound
<u>10:34:54 AM</u>	Douglas Payne	Nothing more.
<u>10:38:37 AM</u>	Judge Gibler	Counsel approach while jury reviewing exhibits
<u>10:49:21 AM</u>		Parties have stipulated to a fact--that is--Stephanie Comack died as result as a result to the gun shot wound to her head
<u>10:49:44 AM</u>		Break now, admonishes jury
<u>10:49:58 AM</u>		Case is recalled--all parties are present, jury is out
<u>11:07:32 AM</u>	James Siebe	Renew motion for mis trial--I didn't move one following the outbreak because I didn't think it was prejudicial to either side
<u>11:08:01 AM</u>		Further reflection on the bruises--no testimony was going to come in per court order. Court had to give a caution instruction. This was victims sister. Then we have testimony of Ms. Riddle and again the jury was instructed on the choking and slapping. Then we have the texting issue. At bench conference you informed Mr. Payne it would be difficult to lay foundation--jury was told to disregard. Have all these things outside the scope of what court ordered. They form to great a basis for us to continue on without suffering
<u>11:10:50 AM</u>		They go more to 404b. Once you ring the bell I don't think you can unring it
<u>11:11:18 AM</u>	Judge Gibler	For each of the statements--jury was instructed any statements were allowed to show the state of mind not for truth of matter
<u>11:11:52 AM</u>		Bruise issue--Mr. Payne did not ask--witness
<u>11:12:06 AM</u>		Jury was instructed to disregard such testimony

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<u>11:12:22 AM</u>		Request is denied
<u>11:13:19 AM</u>	Douglas Payne	Approach
<u>11:13:25 AM</u>	Judge Gibler	Yes
<u>11:15:30 AM</u>		Jury is recalled--all present
<u>11:16:27 AM</u>	Douglas Payne	Call Dr. Clyde Hanson
<u>11:17:11 AM</u>	Dr. Clyde Hanson	Sworn for testimony, work at St. Maries Hospital
<u>11:17:39 AM</u>		Reviews education and training to jury
<u>11:18:19 AM</u>		I have encountered gun shot wounds frequently. I was in ER on Christmas day on 2011. I observed gun shot wound to right forehead with blood coming from right ear. It was a contact wound. It was a grave wound, yes. Her vitals were dropping so I gave her blood and stabilized her and she was shipped to Kootenai Medical Center
<u>11:20:00 AM</u>	Douglas Payne	Nothing more
<u>11:20:06 AM</u>	James Siebe	Noting
<u>11:20:10 AM</u>	Douglas Payne	Call Susie Comack
<u>11:20:34 AM</u>	Douglas Payne	May we approach
<u>11:20:42 AM</u>	Judge Gibler	Yes
<u>11:22:47 AM</u>	Susan Comack	Sworn for testimony, reside in St. Maries, I am Stephanie Comack's mother. She was 18 when died. She spent life in St. Maries.
<u>11:23:39 AM</u>		She was beautiful, intelligent, spastic at times. very loving, she was working as a CNA, she wanted to go into medical field or be an attorney. I brought photo of her
<u>11:25:18 AM</u>		Identifies exhibit 88 photo of Stephanie
<u>11:25:45 AM</u>	Douglas Payne	Admit 88
<u>11:25:50 AM</u>	James Siebe	No objection to 88
<u>11:26:03 AM</u>	Susan Comack	December 10, 2011 she said Joe had broken her phone

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<u>11:26:24 AM</u>	Judge Gibler	Exhibit 88 is admitted instructs jury--this is to show state of mind not for the truth of matter
<u>11:26:42 AM</u>	James Siebe	Object
<u>11:26:52 AM</u>	Judge Gibler	Leave off--Isn't it true
<u>11:27:08 AM</u>	Susan Comack	December she asked to use my car cause Joe said he was going to kill himself
<u>11:27:25 AM</u>		The night before I gave Stephanie new phone
<u>11:27:50 AM</u>	James Siebe	Object
<u>11:27:57 AM</u>	Judge Gibler	Point her to exact conversation
<u>11:28:11 AM</u>	Susan Comack	I told Stephanie the phone was for her and to keep it with her and to use to call us and if Joe touched it, I would break his fingers. I did tell her this was no way to live. She said, Mom you don't understand, he is psycho
<u>11:29:09 AM</u>	Douglas Payne	Nothing more
<u>11:29:14 AM</u>	James Siebe	Cross
<u>11:29:18 AM</u>	Susan Comack	I didn't see Joe break phone. I didn't talk to Joe directly. Didn't contact his mother or father. Stephanie spent part of her time at Joe's. Joe would not speak to me face to face. I never confronted him about being psycho. I never contacted his parents. She takes showers at our house and she ate with us. No, I didn't drive her to Herrera's. I went there to pick her up one time. I lent her car a number of times. I filed law suit against the Herreras
<u>11:31:59 AM</u>	James Siebe	Nothing further
<u>11:32:00 AM</u>	Douglas Payne	State rests
<u>11:32:23 AM</u>	Judge Gibler	Excuse for lunch break--admonishes jury, return at 1245pm
<u>11:32:50 AM</u>		Case is recalled, all present
<u>12:52:23 PM</u>		Jury is recalled--all present
<u>12:53:17 PM</u>	James Siebe	Jerri Herrera
<u>12:53:45 PM</u>		Sworn for testimony, Joseph is son. I knew Stephanie. Met Stephanie in September of 2011. Joe started bringing her over. It was almost every night. I don't think she had a car. She borrowed

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	Jerri Herrera	cars. People would bring her and she would get out of car and come up. Her mother's was a gray tacoma truck I believe. She would get dropped off often. I seen her when her and Joe would come in out. Christmas 2011 we purchased a Christmas Gift from Bath and Body. Her and Joe spent everynight at our place. Never heard them argue. It is two story. Never heard things thrown away. I would see upstairs messy, nothing broken. No one ever contacted me with concerns of Joe and Stephanie
<u>12:57:16 PM</u>		I do recall conversation of Bobbie Riddle. It was in my living room. Stephanie had told me her mom
<u>12:57:48 PM</u>	Dougals Payne	Object
<u>12:57:56 PM</u>	James Siebe	Approach
<u>12:58:53 PM</u>	Judge Gibler	Yes
<u>12:59:24 PM</u>		Overrule the objection. Allow testimony not for the truth, but to simply show the mind of Stephanie Comack--same ruling as before
<u>12:59:49 PM</u>	Jerri Herrera	Stephanie told me she called Bobbie as Aunt Bobbie. I never talked with Susie Comack. She just asked for Stephanie
<u>01:00:50 PM</u>	James Siebe	Nothing more
<u>01:00:57 PM</u>	Douglas Payne	Nothing
<u>01:01:10 PM</u>	James Siebe	Call Joseph Herrera
<u>01:01:42 PM</u>	Defendant	Sworn for testimony- I am defendant in this matter. Been here for trial. Heard all testimony. I met Stephanie towards the end of August through a mutual friend,. She initiated contact with me. She called me. She asked me if I wanted to hang out. I did. She began spending the night with me within a couple weeks. I used meth while Stephanie lived with me and before. Never used intravenously. Stephanie used meth prior to meeting me. We used together on a daily basis
<u>01:04:12 PM</u>		We never talked about stop using I worked at Valley Vista. I did quit because I was using and didn't feel I should be around elderly people while under influence. I told people I would find something different
<u>01:05:07 PM</u>		We started hanging out. I offered to stay at my parents house. She stayed everynight. We did everything and went everything together. She said it was uncomfortable at home with her dad and Bobbie Riddle and she didn't get along with her mom. Have said hello to each of her parents prior. After me and Stephanie

		started hanging out. A friend told me her dad was really protective about her and I read messages. I didn't. I felt like a loser because I was using meth. I have not used since the incident. My perspective has changed. I smoked the meth in a bong. I had observed smoking it from a bong to. I did not see her do meth intravenously. Didn't talk about high school much
<u>01:09:01 PM</u>		Reviews photo exhibit 88
<u>01:09:21 PM</u>		Stephanie was about 25lbs lighter than the photo
<u>01:09:41 PM</u>		I noticed around December her weight loss. I was concerned about her using intravenously. She began acting effutely. She was fairly argumentative before. She expressed her opinion. I honored that
<u>01:11:06 PM</u>		She would always have reasons to leave my house. She would disappear for a few hours at a time. I heard she was being around people using drugs. She seemed to be lying about little stuff that didn't matter to me. We had more arguments. She was not violent to me and I was not violent to her. I heard the testimony of Ms. McEwen. It was not true. I did not break her phone. She broke her own phone. I broke my phone at same time. She did not tell her mother she broke the phone. I didn't threaten suicide if she left. I never threatened her. She would always come back when she left. She did use my phone when I first met her. I got a new phone before her when we broke phones. Jim Comack, Katlyn Comack and Jack Comack and Susie Comack would call my phone while she was using my phone. The night before incident I was at CDA Casino with friends. Stephanie was not with me. She was going to her moms. I had money for Stephanie for Christmas. She didn't have money to buy her family gifts. I was going to give her money. I didn't ever have chance to do that. I got to parents Christmas morning around 430 or 5am. I was under influence of meth. I wouldn't say I was high. Affects were wearing off. I had smoked marij also. The accident was around 1143 or 1130 in the morning. We didn't use drugs that day.
<u>01:18:00 PM</u>		The 25 gun--I got it from a drawer. I got it first for protection. I got it shortly after I filed a police report about window being broke out. It was in May
<u>01:19:18 PM</u>		Dan Arst threw a brick through my back window of car
<u>01:19:31 PM</u>		Reported to police, Rick Odonald and Castles. It was a 500 window
<u>01:20:20 PM</u>		He had previously confronted me, not really sure when--he had came to get some of his daughters stuff at my friends house. His daughter said she would have her dad kick my ass. Another even--don't know exact date. I was at gas station he chased me down, I got in my car and left scene. He said I am going to kill your little ass if I catch you. He was 6'4 200 lbs. I was scared. I

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		was in my parents room and found the 380 and I grabbed it. I was looking for cigg.
<u>01:22:55 PM</u>		I carried both guns with me different times
<u>01:23:04 PM</u>		Stephanie had carried the 25 gun in her purse. She did it on her own. She knew about the Dan Arst issue. Another incident--beginning of September- I was walking in IGA parking, he screamed at me we got in car and left went to friends and then downtown and we got back and windows were broken on my car I let the police know that night
<u>01:25:09 PM</u>		He chased me at the St Joe smoke shop. There was a witness to it. Officers never took action--I never heard anything about it. I did get a estimate for just the back window for 500.00. No one ever got a hold of me about it.
<u>01:27:22 PM</u>		I had Stephanie's phone at time of accident. I wanted to call them about the accident. I talked to Jack. I was on phone with 911 at same time. Jack showed up 5-10 minutes. Jack did have firearm. He had 2 pistols and 2 shoulder holsters. I saw her father show up. I did not see any firearms on him. There was no occasion that I had pointed a gun at Stephanie. She went to her mother and father's house everyday.
<u>01:29:45 PM</u>		I don't remember interview with Officer Berger much.
<u>01:30:18 PM</u>		I do not know why she washed her clothes at her mothers and not mine
<u>01:30:30 PM</u>		Her car was broken down while we were together. She borrowed her moms car a lot and her mom's. We drove her mom's car a lot. I did observe her mother drop her off at my house several times. Her father and her brother also dropped her off at my house. I never had conversation with her father. I knew Jack from around town. Her family didn't ever contact me about being with her. I did not order Stephanie around.
<u>01:33:09 PM</u>		I went downstairs to take shower, now bathroom or kitchen upstairs
<u>01:34:15 PM</u>		Stephanie was still in bed when I went to take shower. Not for sure if she was asleep. I did look at her phone. She was asleep when I looked at her phone. I saw her face booking other guys on her phone. I am not jealous person. I didn't want to be lied to. I confronted her about what I saw on her phone. I asked her why she was talking to other guys. I don't recall what she said. She was upset about me looking at her phone. No real argument. It did give me concern along with her disappearing everyday.
<u>01:36:54 PM</u>		I didn't think she was using meth intravenously when we met
<u>01:37:10 PM</u>		I have had girlfriends before
<u>01:37:19 PM</u>		I didn't want to be with her if she didn't want to be with me

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<u>01:37:28 PM</u>		That morning we dropped the conversation about face book
<u>01:37:50 PM</u>		She was getting her stuff ready to go to her Mother's for Christmas. She had a dresser full of clothes. She was trying to get me to go. I didn't really want to go. Her family didn't care for me. I was trying to talk her out of me going over there. It was a disagreement not argument. She was upset that I wasn't going to her parents and I had skipped out on other events with her family
<u>01:39:35 PM</u>		Stephanie was with me when her sister had baby. She chose not to go. I don't know if they were arguing or not. I knew her sister didn't approve of me. I was invited to pizza with family, I didn't go, Stephanie went and she was dropped off. her sister was having a Christmas singing thing and she feel asleep and she was upset about missing it.
<u>01:41:16 PM</u>		Christmas day--gathering things and discussion of me going went on a couple minutes. We were not yelling. The facebook thing bothered me. I wasn't upset though. After that I decided I was not going to go. We were not threatening each other to break up with each other
<u>01:42:27 PM</u>		the 25 gun was on other side of bed in between mattress and boxspring. It was safe place. Father would have been upset if he knew I took it. The clip was not in it. The police did find drug para in drawer. I wasn't going to leave the para. I always take it with me
<u>01:44:02 PM</u>		When I was showering the gun was in the nightstand with the drug para
<u>01:44:19 PM</u>		I was gonna give her a rider to her mothers, I hid it between the mattress and boxspring. I took it out of nightstand and I removed the clipp from it. The clip and hand gun was in my lap. I was in the rocking chair. I was maybe a foot from Stephanie. The chair was at angle to Stephanie. She was getting her dirty clothes ready and putting them in a backpack as usual. Her clothes were scattered about my room. She had a green basket she kept her clothes in. Her back was to me during part of this. She was bent down picking stuff off the floor. She was facing towards me. There was still clothes of her in the dresser
<u>01:47:49 PM</u>		She was talking about going to her parents her. I told her I would rather shoot myself than go. Clip was on my lap. I don't know how it got on floor. It was not in when I was talking to her. It was in when I took out of drawer. Safety was not on. I had never shot this gun before. I had 2 clips--13 or 14 rounds. I was not serious about killing myself. I pointed the gun to myself, she grabbed barrel of gun and it went off. She had seen the gun before. I do not how gun went off. Officer Berger didn't ask me about face book page. I didn't intend to kill myself. I was trying to express myself that I didn't want to go to her families and feel be littled.
<u>01:51:08 PM</u>		I seen Jim show up. Officer Castle said to "get out of here" not

		my intention to flee scene. I set up meeting with Officer Lehmbecker. I had a couple friends pick me up at Casino. I was concerned about my safety. I knew Stephanie wasn't going to live or she was dead. I loved Stephanie. She told me she loved me to. Thought we had future together. I don't remember much of interview with Lehmbecker
<u>01:53:19 PM</u>		I haven't been able to re construct when the gun went off. I don't recall demonstrating how the gun went off. I didn't mean for gun to go off. I didn't mean to kill Stephanie. I am not guilty of second degree murder
<u>01:54:46 PM</u>	James Siebe	Nothing more
<u>01:54:52 PM</u>	Judge Gibler	Break now--admonishes jury
<u>01:55:10 PM</u>		Case is recalled, all parties present,
<u>02:09:28 PM</u>		Defendant is still under oath
<u>02:09:35 PM</u>		Recall jury--all present
<u>02:10:18 PM</u>	Douglas Payne	Cross exam
<u>02:10:43 PM</u>	Defendant	I didn't keep the clip in the 25 gun. I usually didn't keep it in the gun
<u>02:11:05 PM</u>		380 had the clip in it. I didn't keep a round in the chamber
<u>02:11:27 PM</u>		I did not believe it had a round in chamber when I picked it up Christmas morning
<u>02:11:57 PM</u>		The bong is my meth pipe. Had it a couple months maybe. I built it with parts from hardware store. It was used to smoke marij. also
<u>02:12:43 PM</u>		Reviews exhibit 81--it is a bong, not aware it tested positive for meth. Used it to smoke meth and marij. Stephanie has used the same pipe
<u>02:13:32 PM</u>		She was smoking when I met her. I quit job at Valley Vista because I was using. Meth kinda makes you ancy, rush, stay up several days at a time, can make you hyper. I don't think it affects me with irritability. It makes me stay up and party for a long time
<u>02:14:52 PM</u>	James Siebe	Object
<u>02:15:00 PM</u>	Judge Gibler	Overruled
<u>02:15:07 PM</u>	Defendant	It is a bad drug. It makes mother not take care of their kids
<u>02:15:18 PM</u>	James Siebe	Object

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<u>02:15:23 PM</u>	Judge Gibler	Sustain
<u>02:15:29 PM</u>	James Siebe	Object
<u>02:15:41 PM</u>	Judge Gibler	Overruled
<u>02:15:46 PM</u>	Defendant	When I came down off meth, I would be tired and have to go to sleep. I think intravenous use is more destructive
<u>02:16:34 PM</u>	James Siebe	Object
<u>02:16:39 PM</u>	Judge Gibler	Sustained
<u>02:16:44 PM</u>	Defendant	No, I never saw Stephanie shoot up. I saw her around people that did and no I didn't like it
<u>02:17:21 PM</u>		Mallory Arlt threatened for her dad to kick my ass, I said go ahead. Mallory is 24 or 25 years
<u>02:17:52 PM</u>		I had moved in where Mallory was living and she was forced to move out is why she and her dad were mad
<u>02:18:33 PM</u>		People contacted Stephanie by my phone because she didn't have phone all the time. It was September and October she didn't have phone. I'm not sure when she got her phone. When I arrested I had her and my phone. After I shot it was laying on the floor in front of her. I took her phone to contact her family
<u>02:19:53 PM</u>		I had money to give to Stephanie for Christmas
<u>02:20:05 PM</u>		Not sure when I quit Valley Vista-- I don't remember. I didn't have job when I met Stephanie. I stayed at my parents off and on and at friends houses
<u>02:20:48 PM</u>	James Siebe	Approach
<u>02:22:12 PM</u>	Judge Gibler	Yes
<u>02:22:17 PM</u>	Defendant	
<u>02:24:38 PM</u>	James Siebe	Object
<u>02:24:46 PM</u>	Judge Gibler	Sustained
<u>02:24:48 PM</u>	Defendant	My car was at Ridgewine's house.
<u>02:25:01 PM</u>		I didn't tell Dad I took the 380 or the 25 because my dad would be upset
<u>02:25:40 PM</u>		I never fired the guns

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<u>02:27:32 PM</u>		Reviews exhibit 17--picture of where I stayed
<u>02:27:59 PM</u>		The bed was straight when gun went off. I was sitting in this corner in the chair
<u>02:28:21 PM</u>		Exhibit 18--picture of room--
<u>02:30:22 PM</u>		I was seated when gun went off and she was crouched down. I do not know how gun went off
<u>02:30:41 PM</u>		My intent was to put the gun in my mattress
<u>02:30:52 PM</u>		Didn't want mom to find gun
<u>02:30:59 PM</u>		I was going to drop Stephanie off at her moms
<u>02:31:11 PM</u>		When we were discussing going to her parents is when I put gun to my head
<u>02:31:26 PM</u>		Don't recall what she had said
<u>02:31:38 PM</u>		I don't remember a lot of things that happened that day. It was horrible day for me
<u>02:31:50 PM</u>		I had not threatened suicide ever before
<u>02:33:00 PM</u>		I read her face book messages when Stephanie was asleep. It was quite awhile before I got gun. I showered, opened presents. I just asked her what the deal was about the messages. I got the messages off her phone
<u>02:34:14 PM</u>		Her phone had facebook, I know because I looked at it
<u>02:34:29 PM</u>		My phone has facebook, but I don't use, I don't have facebook profile
<u>02:34:48 PM</u>		I was just curious why she was talking to other guys. If she wasn't happy she should have left. She said, why are you going through my phone
<u>02:35:49 PM</u>		Stephanie grabbed the gun. Last thing I remember was taking out the clip. It was before I took the clip out. I wasn't intending on committing suicide. She knew the clip was out. The gun was pointed at the direct of my head when she grabbed it. She pulled the gun away from me. I heard a pop and then she fell. I can recall nothing else. Not sure if my hand was still on the trigger. I don't remember because of the trauma and the meth. I don't remember if I was feeling affects of meth at time of incident
<u>02:38:05 PM</u>		I don't remember the gun coming into contact with Stephanie's forehead
<u>02:38:20 PM</u>		I don't remember if I pulled back the slide
<u>02:38:42 PM</u>	Douglas Payne	Nothing more
<u>02:38:48 PM</u>	James Siebe	Re direct

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<u>02:39:28 PM</u>		Reviews exhibit 17 and 18
<u>02:40:09 PM</u>		Lived somewhere else when growing up
<u>02:40:27 PM</u>		Yes, meth affects different people in different ways
<u>02:40:42 PM</u>		I never hallucinated on meth
<u>02:40:51 PM</u>		Have heard stories
<u>02:41:26 PM</u>		Was introduced to meth in social group
<u>02:42:19 PM</u>		Have heard meth referred to as speed
<u>02:42:37 PM</u>		I was able to sleep that morning when I returned home. I wasn't very much under the influence
<u>02:43:07 PM</u>		I have not ever used facebook. I have text. Stephanie texts and facebook on her phone. I am not sure if she ever had any affairs. Never accused her of it
<u>02:43:49 PM</u>	James Siebe	Nothing more
<u>02:43:56 PM</u>	Douglas Payne	Re cross
<u>02:44:04 PM</u>	Defendant	I don't recall if I pointed gun at myself again when mother came up
<u>02:44:22 PM</u>	James Sibe	Defense rests
<u>02:44:34 PM</u>	Douglas Payne	Rebuttal--call Detective Berger
<u>02:44:53 PM</u>	Detective Paul Berger	Understand still under oath
<u>02:45:18 PM</u>		Reviews training and experience with drugs
<u>02:47:42 PM</u>	James Siebe	Object
<u>02:48:35 PM</u>	Judge Gibler	Overruled
<u>02:48:40 PM</u>	James Siebe	Object
<u>02:48:44 PM</u>	Judge Gibler	Sustained
<u>02:49:00 PM</u>	Detective Paul Berger	Continue with training and experience--net result of smoking or intravenous drug use is the same
<u>02:49:41 PM</u>		Interview with defendant around 6pm--he seemed coherent at that point. Each questions he would answer.

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<u>02:50:15 PM</u>	James Siebe	Object
<u>02:50:20 PM</u>	Judge Gibler	Sustained
<u>02:50:25 PM</u>	Detective Paul Berger	
<u>02:50:40 PM</u>	James Siebe	Object
<u>02:50:48 PM</u>	Judge Gibler	I am not sure what you are rebutting here--tape is in evidence
<u>02:51:15 PM</u>	Douglas Payne	Withdraw question
<u>02:51:27 PM</u>	Detective Paul Berger	
<u>02:51:36 PM</u>	James Siebe	Object
<u>02:51:43 PM</u>	Judge Gibler	Overruled
<u>02:51:49 PM</u>	Detective Paul Berger	Duration of a high on meth is 2-4 hours
<u>02:52:07 PM</u>	Douglas Payne	Nothing more
<u>02:52:14 PM</u>	James Siebe	re question
<u>02:52:19 PM</u>	Detective Paul Berger	Reviews education other than law enforcement
<u>02:52:37 PM</u>		I don't believe Joe was under influence when I interviewed.
<u>02:53:45 PM</u>		Meth is addictive
<u>02:53:51 PM</u>		I said that the affects of the use is the same with smoking or intravenous
<u>02:54:23 PM</u>		I am talking about use
<u>02:54:34 PM</u>		I have not ever used. This is what I have been told in training
<u>02:54:45 PM</u>	James Siebe	Nothing more
<u>02:54:50 PM</u>	Douglas Payne	re question

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<u>02:54:54 PM</u>	Detective Paul Berger	Meth is highly addictive wether smoked or intravenous use
<u>02:55:18 PM</u>	Douglas Payne	Nothing more
<u>02:55:24 PM</u>	James Siebe	No more evidence
<u>02:55:33 PM</u>	Judge Gibler	Evidence is concluded now.
<u>02:55:42 PM</u>		Return tomorrow at 9am--admonishes jury
<u>02:55:56 PM</u>	James Siebe	Ask to be back in 45 minutes
<u>02:56:55 PM</u>	Judge Gibler	Be back at 330pm--Counsel to do jury instructions 330pm
<u>02:57:02 PM</u>	end	

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<b>Description</b>	Benewah County Case 2011-2053 20130619 Jury Trial Judge Gibler Clerk Emily Hamilton Court Reporter Valerie Nunemacher		
<b>Date</b>	6/19/2013	<b>Location</b>	1K-COURTROOM1
<b>Time</b>	<b>Speaker</b>	<b>Note</b>	
08:58:55 AM	Judge Gibler	Jury Trial, Day 5--Defendant is present, in custody	
08:59:17 AM	Douglas Payne	No objection to jury instructions	
08:59:29 AM	James Siebe	We are in agreement, no objections	
08:59:50 AM	Judge Gibler	Recall the jury--all present--RECORDING ISSUE--SEE NEXT PAGE	

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<b>Description</b>	Benewah Count Case 2011-2053 Herrera, Joseph 20130619 Jury Trial Judge Gibler Clerk Emily Hamilton Court Reporter Valerie Nunemacher		
<b>Date</b>	6/19/2013	<b>Location</b>	1K-COURTROOM14
<b>Time</b>	<b>Speaker</b>	<b>Note</b>	
<u>09:01:55 AM</u>			
<u>09:02:07 AM</u>	Judge Gibler	Jury Trial--Day 5 Defendant is present, in custody	
<u>09:02:10 AM</u>	Douglas Payne	No objections to jury instructions	
<u>09:02:16 AM</u>	James Siebe	We are in agreement, no objections	
<u>09:02:18 AM</u>	Judge Gibler	Recall the Jury--all present	
<u>09:02:22 AM</u>		Final Instructions given to Jury	
<u>09:14:36 AM</u>	Douglas Payne	Closing argument given to jury	
<u>09:31:42 AM</u>	James Siebe	Object	
<u>09:31:47 AM</u>	Judge Gibler	Sustained	
<u>09:31:55 AM</u>	Douglas Payne	Continues with closing argument to jury	
<u>09:44:37 AM</u>	James Siebe	Object	
<u>09:44:47 AM</u>	Judge Gibler	Sustained	
<u>09:45:15 AM</u>	Douglas Payne	Continues with closing argument to jury	
<u>09:48:13 AM</u>	James Siebe	Object	
<u>09:48:19 AM</u>	Judge Gibler	Jury has been instructed	
<u>09:48:47 AM</u>	Douglas Payne	Continues with closing argument to jury	
<u>09:52:41 AM</u>	James Siebe	Object	
<u>09:52:48 AM</u>	Judge Gibler	You will have a chance to argue	
<u>09:52:55 AM</u>	Douglas Payne	Continues with closing argument to jury	
<u>10:02:20 AM</u>	James	Closing argument given to jury	

	Siebe	
<u>10:45:12 AM</u>	Judge Gibler	Break now for 10 minutes--admonishes jury
<u>10:58:59 AM</u>		Case is recalled, all parties present
<u>10:59:09 AM</u>		Jury recalled, all present
<u>10:59:46 AM</u>	Douglas Payne	Final closing argument given to jury
<u>11:02:45 AM</u>	James Siebe	Object
<u>11:02:53 AM</u>	Judge Gibler	Sustained-burden of proof is never on defendant
<u>11:03:15 AM</u>	Douglas Payne	Continues with final closing argument to jury
<u>11:06:57 AM</u>	James Siebe	Object
<u>11:07:02 AM</u>	Judge Gibler	The jury will remember--Not important anyway
<u>11:07:29 AM</u>	Douglas Payne	Continues with final closing argument to jury
<u>11:10:32 AM</u>	James Siebe	Object
<u>11:10:37 AM</u>	Judge Gibler	Overruled
<u>11:10:44 AM</u>	James Siebe	Object
<u>11:10:54 AM</u>	Judge Gibler	Overruled
<u>11:10:57 AM</u>	Douglas Payne	Continues with final closing argument to jury
<u>11:17:42 AM</u>	James Siebe	Object
<u>11:17:53 AM</u>	Judge Gibler	Ok she is 5'3
<u>11:18:05 AM</u>	Douglas Payne	Continues with final closing argument to jury
<u>11:18:20 AM</u>	Judge Gibler	Argument is concluded now
<u>11:20:17 AM</u>		Calls alternate jurors--Betty Peterson and Kellsey Anderson
<u>11:20:39 AM</u>		Admonishes alternate jurors
<u>11:22:02 AM</u>	Clerk	Swear bailiff for deliberations
<u>11:23:57 AM</u>	Judge Gibler	Jury excused for deliberations
<u>11:24:11 AM</u>		Case is recalled, all parties are present
<u>02:47:14 PM</u>		Jury is out
<u>02:47:28 PM</u>		Emotional trial--caution audience, no comments, I ask that you



		respect the jury and the system. If there are any outburst you will be removed from the courtroom immediately
<u>02:48:12 PM</u>		Re call the jury--all present
<u>02:51:07 PM</u>	Clerk	Verdict--Guilty Murder Second Degree
<u>02:51:21 PM</u>	Douglas Payne	No polling of jury
<u>02:51:34 PM</u>	James Siebe	Poll jury
<u>02:51:40 PM</u>	Judge Gibler	Poll jury
<u>02:52:16 PM</u>		Order Pre Sentence Report
<u>02:52:18 PM</u>		Revoke Bail
<u>02:52:22 PM</u>		Set Sentencing for August 29, 2013 Thursday at 3pm here in Kootenai County
<u>02:54:49 PM</u>		It could change. We will try to keep the date
<u>02:55:13 PM</u>		Excuse jury--thanks jury

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STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: 2011/11/13  
AT 2:55 O'CLOCK PM  
CLERK/DISTRICT COURT  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BENEWAH

STATE OF IDAHO, )  
 )  
Plaintiff, )  
 ) Case No. CR11-2053  
vs. )  
 ) VERDICT  
JOSEPH DUANE HERRERA, )  
 )  
Defendant. )  
\_\_\_\_\_ )

We, the jury, duly impaneled and sworn to try the above  
entitled action, for our verdict, unanimously answer the  
questions submitted to us as follows:

1. Is Joseph Duane Herrera not guilty or guilty of MURDER IN  
THE SECOND DEGREE?

NOT GUILTY ( )  
GUILTY (X)

If you unanimously answered Question No. 1 "Guilty," then  
you should simply sign the verdict form and advise the bailiff.  
If you unanimously answered Question No. 1 "Not Guilty," then  
proceed to answer Question No. 2.

2. Is Joseph Duane Herrera not guilty or guilty of VOLUNTARY  
MANSLAUGHTER?

NOT GUILTY ( )  
GUILTY ( )

VERDICT

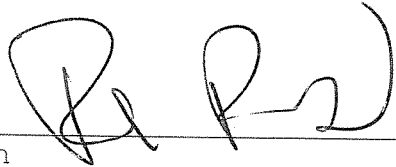
If you unanimously answered Question No. 2 "Guilty," then you should simply sign the verdict form and advise the bailiff. If you unanimously answered Question No. 2 "Not Guilty," then proceed to answer Question No. 3.

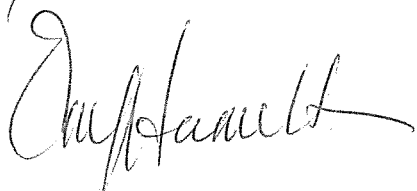
3. Is Joseph Duane Herrera not guilty or guilty of INVOLUNTARY MANSLAUGHTER?

NOT GUILTY ( )  
GUILTY ( )

DATED this 19<sup>th</sup> day of JUNE, 2013.

Foreman



6/20/13  
Copies sent to:  
Douglas Paine by fax 208 245-1915  
James Suke by fax 208-882-8769  


State of Idaho ) ss  
County of Kootenai )  
Filed 255/19/13  
At 2:55 o'clock PM  
CLERK OF THE COURT  
BY: [Signature]  
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, )

Plaintiff, )

Case No. **CRF** 2011-2053

**ORDER FOR EVALUATION(S)  
AND SETTING SENTENCING**

In Custody ☒ Yes – Transport for PSI/Eval authorized  
☐ No

Phone \_\_\_\_\_

DOB 12/5/1983

The above named defendant having - pleaded guilty in this matter; X been found guilty by jury trial;  
to: MURDER II

[ ] admitted to/found to have violated probation.

**IT IS ORDERED** that not later than the next business day after the date of this order you must physically  
report to Probation & Parole, 202 Anton, Coeur d'Alene, Idaho (208/769-1444) and comply with conditions of  
the presentence investigation. The presentence report is due seven (7) days prior to the sentencing hearing.

**IT IS FURTHER ORDERED** that your continued release is conditioned upon your making and keeping all  
appointments with Probation & Parole, complying with all conditions of the presentence investigator, and  
obtaining any or all of the following evaluations. You must obtain any evaluation checked below.

- \_\_\_\_\_ Psychosexual Evaluation  
\_\_\_\_\_ Domestic Violence Evaluation  
\_\_\_\_\_ Other \_\_\_\_\_

\_\_\_\_\_ Substance Abuse Evaluation.. [ ] } Assessment shall include whether defendant is an addict  
\_\_\_\_\_ Mental Health Evaluation ..... [ ] } or alcoholic, and, if so, a plan of treatment. If it is  
determined defendant needs treatment; IT IS FURTHER  
ORDERED that treatment shall be provided pursuant to  
I.C. 19-2524, to be paid for by the Dept. for Health &  
Welfare subject to reimbursement by the defendant.

**YOU ARE ORDERED** to appear for sentencing/disposition on August 29<sup>th</sup>, 2013 at 3:00 m.

DATED this 19 day of June, 2013.

Fred M. Hill  
Judge

**CERTIFICATE OF DELIVERY**

I hereby certify that on the 19 day of June, 2013 copies of the foregoing Order  
were delivered in court, mailed-postage prepaid, sent by facsimile or interoffice mail to:

Defense Attorney: [Signature]

Defendant

Probation & Parole: [Signature]

Prosecuting Attorney: [Signature]

Health and Welfare

Other: \_\_\_\_\_

☐ In Court ☐ Interoffice ☐ Mailed ☐ Faxed \_\_\_\_\_

- ☒ In Court ☐ Interoffice ☐ Faxed \_\_\_\_\_  
☐ In Court ☐ Interoffice ☐ Mailed – address above  
☐ In Court ☐ Interoffice ☒ Faxed (208) 769-1481  
☐ In Court ☐ Interoffice ☐ Faxed (208) 446-1833  
☐ Faxed (208) 769-1430

CLERK OF THE DISTRICT COURT

BY: [Signature]  
Deputy

DOUGLAS PAUL PAYNE #4789  
Prosecuting Attorney  
Benewah County Courthouse  
St. Maries, Idaho 83861  
Telephone: 208-245-2564

FILED  
BENEWAH COUNTY

2013 JUN 21 PM 12:34

BY: CJR .DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BENEWAH

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	
	)	Case No. CR11-2053
vs.	)	
	)	ORDER ENTERING JURY VERDICT
	)	OF GUILTY AND FOR PRESENTENCE
JOSEPH DUANE HERRERA,	)	INVESTIGATION
	)	
Defendant.	)	
_____	)	

The above-entitled matter, came on regularly for trial by jury on the 11th, 12th, 13th, 18th and 19th days of June, 2013, before the Honorable Fred M. Gibler, one of the Judges of the above entitled Court presiding; the State was represented by Douglas Paul Payne, Prosecuting Attorney for Benewah County, State of Idaho; the defendant was personally present and was represented by James E. Siebe.

WHEREUPON, the matter was tried before a duly empanelled jury of twelve (12) jurors.

WHEREUPON, the jury heard the evidence and arguments of counsel and after due deliberation did return its unanimous verdict finding the defendant, JOSEPH DUANE HERRERA, GUILTY of the crime of MURDER IN THE SECOND DEGREE, a felony, in violation of Idaho Code Section 18-4001 as charged in the Information on file herein.

WHEREUPON, the jury was polled.

WHEREUPON, the Court having accepted said verdict did then enter its Order as follows:

IT IS HEREBY ORDERED THAT:

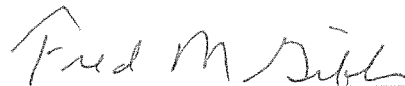
1. The Clerk of the above-entitled Court enter of record the above-stated verdict of the jury;

2. A presentence investigation be conducted by the Idaho Board of Corrections and a copy of said report presented to the Court and Counsel herein seven (7) working days before the date for sentencing;

3. The above-entitled matter be, and hereby is continued until 3:00 p.m. o'clock on the 29th day of August, 2013; at which time the above-named defendant shall appear before one of the Judges of the above-entitled Court at the Courtroom of the Kootenai County Courthouse, Coeur d'Alene, Idaho, for consideration of said presentence report and sentencing herein; and

4. The defendant shall be held in the Benewah County Jail without bail.

DATED the 21<sup>st</sup> day of June, 2013.



Fred M. Gibler  
District Judge

I hereby certify that on the 21<sup>st</sup>  
day of June, 2013, a true  
and correct copy of the foregoing  
was delivered/mailed, postage prepaid,  
to:

Douglas Paul Payne  
Prosecuting Attorney  
Courthouse Mailbox  
St. Maries, Idaho

James E. Siebe  
Attorney at Law  
608 Northwest Blvd., Ste. 101  
Coeur d'Alene, Idaho 83814

Probation & Parole  
Dept. of Corrections  
202 Anton, Suite 100  
Coeur d'Alene, Idaho 83815

By Carol Rya





CERTIFICATE OF SERVICE

I hereby certify that on the 28<sup>th</sup> day of August, 2013, I served a true and correct copy of the foregoing document by the method indicated and addressed to the following:

James E. Siebe  
SIEBE LAW OFFICES  
P.O. Box 9045  
Moscow, ID 83843

( ) U.S. Mail  
( ) Overnight Mail  
( ) Hand Delivery  
(☒) Facsimile to (208) 882-8769

Benewah County Prosecutor  
701 College St.  
St. Maries, ID 83861

( ) U.S. Mail  
(☒) Hand Delivered  
( ) Overnight Mail  
( ) Facsimile to: (208) 245-1915

Carol Ryan  
Deputy Clerk

<b>Description</b>	Benewah County Case 2011-2053 20130829 Herrera, Joseph Sentencing Judge Gibler Clerk Emily Hamilton Court Reporter Byrl Cinnamon		
<b>Date</b>	8/29/2013	<b>Location</b>	1K-COURTROOM14
<b>Time</b>	<b>Speaker</b>	<b>Note</b>	
<u>01:32:34 PM</u>	Judge Gibler	Sentencing Hearing, Defendant is present, in custody	
<u>03:08:47 PM</u>	James Siebe	He has seen report.	
<u>03:09:39 PM</u>	Douglas Payne	Call Katlyn Comack	
<u>03:10:05 PM</u>	Katlyn Comack	Sworn for testimony, older sister of Stephanie.	
<u>03:11:09 PM</u>	James Siebe	Object this is improper victim impact	
<u>03:11:18 PM</u>	Douglas Payne	Argument--relevant to sentencing	
<u>03:11:27 PM</u>	Judge Gibler	Overruled	
<u>03:11:31 PM</u>	Katlyn Comack	She said he was a psycho and he new where I lived so she was scared to come live with me. It was two nights before when she told me. We just talked about things We drove around and talked about things. She said she wanted to leave him but she was just scared.	
<u>03:13:00 PM</u>	James Siebe	Cross Exam	
<u>03:13:06 PM</u>	Katlyn Comack	She was not under influence of drugs when we talked. She was my sister, best friend and she would tell me. She was dead before I could do anything. I asked her to live with me.	
<u>03:13:38 PM</u>	James Siebe	No further questions	
<u>03:13:49 PM</u>	Katlyn Comack	This has affected me in every way possible. Christmas will never be the same. We are all sad. I have two kids that don't get to grow up with their aunt. Every day I miss her. She had huge impact on all our lives. She was my best friend. Affected my family hugely to. It is just really not fare. She was just a little kid and she had a lot more to do in life. Want Joe to spend the rest of his life in prison like he took my sister's chance away. She didn't do anything wrong. She was just a kid.	
<u>03:15:31 PM</u>	James		

*AmHe* Page 271

	Siebe	Object
<u>03:15:37 PM</u>	Judge Gibler	Counsel to bench
<u>03:16:56 PM</u>		Objection is overruled
<u>03:17:02 PM</u>	Katlyn Comack	I just think the fare thing to happen is for him to spend his life in prison because he took my sisters life without thinking twice
<u>03:17:40 PM</u>	Douglas Payne	Call Jack Comack
<u>03:17:48 PM</u>	Jack Comack	Stephanie is my little sister. I think you should put him in prison for life without parole. He deserves what he gets in prison. He never gave her another chance. He hasn't shown any remorse. He never cried, he never did nothing. He just downgraded Stephanie the whole time
<u>03:19:24 PM</u>	Douglas Payne	Call Tiffany Reeves
<u>03:19:41 PM</u>	Tiffany Reeves	Stephanie is my sister in law.
<u>03:20:00 PM</u>		Reads written statement to court
<u>03:21:16 PM</u>	Douglas Payne	Call Junior Sherwood
<u>03:21:25 PM</u>	Junior Sherwood	I was one of Stephanie's friends
<u>03:21:45 PM</u>		You took someone dearest to our hearts. Little girl that had her whole life ahead of her. 2 little nephews will only hear how she loved them instead of them seeing her. You had no remorse at the trial. I don't think this man should see the light of day
<u>03:22:37 PM</u>	Douglas Payne	Call Cassidy Comack
<u>03:22:52 PM</u>		She has letter for court instead of testifying, she is 12 years old
<u>03:23:47 PM</u>	James Siebe	It is hard to believe 12 year old could write this. I don't object because if someone helped her they were probably on the list of the acceptable people that could make such an impact
<u>03:24:11 PM</u>	Judge Gibler	I will accept the statement--reviews statement from Cassidy Comack
<u>03:26:33 PM</u>	Douglas Payne	Call Suzi Comack
<u>03:26:44 PM</u>	Suzi Comack	Cassidy did right that letter. She was 10 years old when this happened. We haven't read it. She is only 12 now
<u>03:27:20 PM</u>	Judge Gibler	I accept the statement

<u>03:27:27 PM</u>	Suzi Comack	Losing her has left a huge hole in our family/hearts. It is very hard for anyone to go on. I am here to speak for her father also. I don't know how a father is to react.
<u>03:28:13 PM</u>		He saw what he did to her. He tried to protect her from Joe. He had to be the one to tell me that there was no hope. He is the one that held her hand when took her off the machine. He is the one that said goodbye for all of us. I don't know how you expect us to react. She was beautiful, smart, young and healthy until Joe got her. She cut her off from her family and friends. She was so upset she threw up. She was withering away in front of us. She tried to leave. He always got her to come back. I don't know what it was. She was brave and would have done anything to protect her family/friends
<u>03:30:06 PM</u>		Joe Herrera put her gun to her head and killed her on purpose. He is mean, selfish and self centered and he wants to be a gangster, he got his life. He doesn't deserve parole
<u>03:30:26 PM</u>		He doesn't deserve sympathy.
<u>03:30:38 PM</u>		He never cried for Stephanie
<u>03:30:54 PM</u>		He is a not good person. He is not redeemable. He is not good for society. He would do it again. His family has not shown any sympathy. You let happen in your home. You know what he was and you still do. This happened in your home.
<u>03:31:43 PM</u>		I want you people to remember this the rest of your life. We have to. She is gone. You deserve to lose your son today.
<u>03:32:15 PM</u>		Joe your such a loser, Your not a human being your a monster. It is a joke that your saved. I wanted to forgive you when I came here today. I can't do it, you have never have asked. Your crying is fake. You are nothing to us, you never were. You took advantage of a beautiful girl. You killed her on purpose with malicious intent. Ask you put him away for as long as you can. He needs to go there for a long long time. I found papers on my computer from Stephanie. I printed it for you so you can see what she was like
<u>03:34:42 PM</u>	Judge Gibler	Give the papers to Mr. Payne first. Thank you Ms. Comack
<u>03:36:09 PM</u>	Douglas Payne	Reviews papers and shows to James Siebe
<u>03:36:25 PM</u>	Judge Gibler	You have both reviewed it---reviews papers from Ms. Comack
<u>03:37:48 PM</u>		It will be included in the presentence materials
<u>03:38:04 PM</u>	Douglas Payne	Nothing more
<u>03:38:14 PM</u>	Judge	I have a number of letters submitted for Mr. Siebe also will be

	Gibler	included
<u>03:38:34 PM</u>	Douglas Payne	The hard part is knowing what the right thing is.
<u>03:40:51 PM</u>		10 years to life is available
<u>03:41:23 PM</u>		The evidence proved that this was 2nd degree murder and the killing though was malicious, no proof it was premeditated
<u>03:41:48 PM</u>		The defendant's life is a shipwreck--reviews prior record
<u>03:44:04 PM</u>		The room where Stephanie died shows his life, drugs, drug para, 2 guns, that was the picture of his life
<u>03:47:29 PM</u>		This sentence needs to make a statement
<u>03:48:02 PM</u>		10 years is inadequate sentence
<u>03:49:12 PM</u>		Call for justice is what the court is hearing from the Comack's
<u>03:49:51 PM</u>		Mitigating circumstances, he had no felonies prior, he had misdemeanors, no felonies, the evidence shows he put the gun to her head with malice, It does not show he intended to do it
<u>03:50:34 PM</u>		He was 28 years old when this happened. She was 18 years old. No evidence that Joe Herrera contributed anything except Joe Herrera. She was in fear of him, mortal fear. He stole guns from his own father. He used meth just a few hours before this happened
<u>03:52:02 PM</u>		He acknowledged using meth with her the night before, a 28 year old man with a 18 year old girl
<u>03:52:32 PM</u>		He left her alone on Christmas Eve
<u>03:52:37 PM</u>		He pulled a gun out and pointed it at her forehead
<u>03:52:57 PM</u>		The basis of this disagreement was that she wanted to go see her family on Christmas
<u>03:53:18 PM</u>		He has never taken responsibility. The blame was on Stephanie to the end.
<u>03:53:52 PM</u>		He killed her. All the victims as you saw today want him to never see the light of day
<u>03:54:45 PM</u>		Impossible to ever get justice
<u>03:54:51 PM</u>		The agony of the Comacks will never stop
<u>03:55:39 PM</u>		This is the day Joe Herrera gets
<u>03:56:14 PM</u>		640 days he gets credit
<u>03:56:23 PM</u>		He is 29 years old about 30 years now
<u>03:56:30 PM</u>		State recommends Indeterminate Life
<u>03:56:53 PM</u>		State recommends fixed time 22 years
<u>03:57:10 PM</u>		He will be 50 years old when he may be able to get out

<u>03:58:20 PM</u>	James Siebe	I don't agree with him as to sentencing recommendations.
<u>03:58:42 PM</u>		Mr. Payne through this all has engaged in quite a professional way. It would have been an easy way to charge him with Murder First Degree
<u>03:59:29 PM</u>		He is a very professional caring person. Want to pass this to Mr. Payne. Want record to reflect this.
<u>04:00:29 PM</u>		Presentence report--this was a difficult pre sentence. I wrote investigator and told him that I would be present during the interview. I don't think the investigator got the 6th amendment right. There some references about my letter and not letting him answer. I assume court understands.
<u>04:02:10 PM</u>		It was totally appropriate how we approached the matter
<u>04:02:21 PM</u>		Investigator disregarded an event at the jail that is relevant to this court as to rehabilitation
<u>04:02:51 PM</u>		My client responded to a hanging in the Benewah, he asked deputy to let him out and he could help him and helped him keep breathing. I confirmed this with deputy.
<u>04:03:32 PM</u>		I was disappointed he didn't bring up in pre sentence report
<u>04:04:10 PM</u>		He was let out of his cell to help revive him. It should get some acknowledgement
<u>04:04:35 PM</u>		Consider giving the parole board more leeway than Mr. Payne would offer to determine when Joe would be released. Understand where Comack's coming from regarding no remorse--expectation of victim family, they don't understand it just isn't permissible for defendant to apologize
<u>04:05:47 PM</u>		Joe has every intention of making apology to the Comack's
<u>04:06:14 PM</u>		Joe has internalized this. He has to live with this everyday all day that he is responsible for death of Stephanie Comack
<u>04:07:29 PM</u>		I disagree that we somehow smeared Stephanie Comack.
<u>04:07:45 PM</u>		Joe did love her. He thought the chamber was empty. He pulled the clip out and thought the chamber was empty as well
<u>04:08:40 PM</u>		There was no intent to smear Stephanie Comack. Bad facts in case-guns, meth and age differential
<u>04:09:09 PM</u>		Stephanie did not get her habit through Joe. No intent that Joe was any better than her
<u>04:09:45 PM</u>		Guns are important, he did steal from his father. There was a police report regarding someone smashing out his windows. Nothing shows he carried around a gun because he was a meth user
<u>04:11:25 PM</u>		Not disagreeing that Stephanie was victim or her family was

		victimized
<u>04:11:38 PM</u>		Young males, brains don't mature until 26 or 27 years old. Not reasonable that the age difference was yet another indication of the kind of victimization that the state wants you to believe
<u>04:12:48 PM</u>		Appropriate to make determinate time shorter than what Mr. Payne has requested.
<u>04:13:23 PM</u>		We have drug related behavior. We hasn't used drugs in 2 years and will have substantial time following this and other means which the prison system can observe/test Joe for release
<u>04:14:12 PM</u>		No reason to believe that Joe would going out to do this again
<u>04:14:46 PM</u>		Joe has lived with this for 2 years and whatever determinate you give him in future
<u>04:15:18 PM</u>		Appropriate sentence, where the parole board had the biggest handle on determining if he was eligible for parole, they will be the people to know what's best at that time
<u>04:15:44 PM</u>	Defendant	I have letter to read
<u>04:15:53 PM</u>		Reads letter to court --Apology
<u>04:16:46 PM</u>	Judge Gibler	Thank you, the pre sentence details the prior record. This first felony offense. The prior record includes, alcohol, battery, drugs, domestic violence, this does have significance for the proceedings today--defendant's use of drugs at or about the time of incident
<u>04:17:33 PM</u>		Manipulation and control over Stephanie showed at trial
<u>04:17:44 PM</u>		Prior domestic battery charge are reflective of type of conduct
<u>04:17:59 PM</u>		Prison is a for gone conclusion
<u>04:18:17 PM</u>		There was testimony at the trial--for legal reasons some not admissible for trial. I can consider for sentencing. It is similar about what Katlyn said today--the amount of control he was exerting on Stephanie and it was continuing. Stephanie was in fear of Mr. Herrera. Her fear was certainly with justification as it turned out
<u>04:19:16 PM</u>		I have reviewed the letters of support of Mr. Herrera. They are typical in case like this.
<u>04:19:43 PM</u>		Jury found him guilty of 2nd Degree Murder
<u>04:19:55 PM</u>		Jury was required to find he committed a malicious intentional act which resulted in death of Stephanie
<u>04:20:11 PM</u>		Evidence at trial, supported the jury verdict. No surprise the jury reached this verdict
<u>04:20:33 PM</u>		One thing Katlyn said was that the biggest tragedy was that Stephanie didn't do anything wrong.

<u>04:20:53 PM</u>		She did nothing for the treatment of Mr. Herrera even prior to the murder
<u>04:21:08 PM</u>		Submission of Ms. Comack was very moving, showed Stephanie had career goals, she wanted to help people be a nurse and lawyer, speaks a lot about her character
<u>04:21:54 PM</u>		It is difficult to imagine the emotions the Comack family has gone through.
<u>04:22:08 PM</u>		Stephanie was a young lady with full life ahead of her. She was murdered on Christmas.
<u>04:22:36 PM</u>		I thought about this a lot.
<u>04:22:43 PM</u>		I suspect if I was in the position of Comack family, I would be making same plea for a life sentence without parole. It is understandable
<u>04:23:05 PM</u>		I am restricted by the law to impose a life sentence without parole requires a finding that he could never be released back into society--strict standard by the Appellate Courts
<u>04:23:37 PM</u>		No doubt in my mind if I were to follow this, after appeal, we would be back here for sentencing. It would be abuse of my discretion at sentencing.
<u>04:24:12 PM</u>		I am hopeful with sentencing today everyone can get some degree of closure.
<u>04:24:41 PM</u>		Most aggravating Mr. Herrera pulled a gun and shot a young lady and resulted in her death. She had done nothing wrong.
<u>04:25:08 PM</u>		Accumulation of conduct of Mr. Herrera going on for a few months and resulted in death/murder of Stephanie
<u>04:25:31 PM</u>		This is his first felony, he has done some positive while awaiting sentencing
<u>04:25:43 PM</u>		He did take a life. A daughter and sister obviously beloved
<u>04:25:58 PM</u>		Goals of sentencing reviewed--
<u>04:27:13 PM</u>		Sentence needs to show him not just the act off murdering Stephanie, there was a whole series of events that lead up to this and he needs to be a prison term that he contemplates how he came into the position of committing this crime
<u>04:28:19 PM</u>		In Idaho--there is an determinate portion which is a maximum sentence he could serve and there is an indeterminate portion he must serve before paroled
<u>04:30:09 PM</u>		Sentence Life, fixed term is 22 years
<u>04:30:20 PM</u>		640 days credit time served
<u>04:31:04 PM</u>		100.00 Idaho Department of Correction for pre sentence report
<u>04:31:26 PM</u>		Court Costs 240.50



04:31:40 PM	Douglas Payne	Leave restitution open 120 days
04:31:50 PM	Judge Gibler	Restitution open 120 days
04:32:00 PM		Remand to Custody
04:32:10 PM	end	

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Page 278

STATE OF IDAHO )  
County of Kootenai ) SS  
FILED 8/29/13  
AT 4:38 O'clock P M  
CLERK, DISTRICT COURT

Deputy CAR

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF BENEWAH**

STATE OF IDAHO

Plaintiff,

VS.

**JOSEPH DUANE HERRERA**

Defendant.

Case No: CRF-2011-2053

## JUDGMENT AND SENTENCE

*The block checked below constitutes the Judgment and Sentence in the above matter(s).*

☐ ORDER SUSPENDING JUDGMENT AND SENTENCE  
☐ ORDER WITHHOLDING JUDGMENT  
☐ ORDER RETAINED JURISDICTION  
☒ COMMITTED TO IDAHO DEPARTMENT OF CORRECTIONS

On August 29, 2013, before the Honorable Fred M. Gibler, District Judge, you, **Joseph Duane Herrera** personally appeared for sentencing. Also appearing were Douglas Paul Payne, Prosecuting Attorney for Benewah, County, Idaho and your lawyer, James E. Siebe.

WHEREUPON, the previously ordered pre-sentence report having been filed, and the Court having ascertained that you have had an opportunity to read the pre-sentence report and review it with your lawyer, and you having been given the opportunity to explain, correct or

deny parts of the pre-sentence report, and having done so, and you having been given the opportunity to make a statement and having done so, and recommendations having been made by counsel for the State and by your lawyer, and there being no legal reason given why judgment and sentence should not then be pronounced, the Court did then pronounce its judgment and sentence as follows:

**IT IS HEREBY ORDERED AND IT IS THE JUDGMENT OF THIS COURT** that you, **Joseph Duane Herrera**

Having been found guilty by a jury of the criminal offense charged in the **Information**, on file herein as follows:

**MURDER IN THE SECOND DEGREE I18-4001 AND I18-4003(g), a felony**

**THAT YOU, Joseph Duane Herrera, ARE GUILTY OF THE CRIME SO CHARGED, and now, therefore,**

**IT IS HEREBY FURTHER ORDERED** that, pursuant to I.C. § 19-2513, you, **Joseph Duane Herrera**, are sentenced as follows:

Count 1 - 22 years fixed; Life years indeterminate; for a total term not to exceed Life years.

**IT IS FURTHER ORDERED** that you, **Joseph Duane Herrera**, shall be given credit for time served on the above sentence(s) as follows:

CR-2011-0020976 640 days credit for time served.

✓**IT IS FURTHER ORDERED** that **Joseph Duane Herrera** is committed to the custody of the Idaho State Board of Correction on the date of the sentencing hearing.

**IT IS FURTHER ORDERED** pursuant to *I.C. § 19-5302* that the court shall reserve jurisdiction to allow the State to file a memorandum of restitution. Upon the filing of a memorandum of restitution within 120 days, the Court shall enter an order in said amount

unless the defendant files an objection and notice of hearing on the issue within twenty-eight (28) days of the filing of the memorandum of restitution. Thereafter, a separate civil judgment shall be entered against you, **Joseph Duane Herrera**, and in favor of your victims. Such civil judgment shall bear statutory interest from the date of each offense.

**IT IS FURTHER ORDERED** that any bail posted in this matter shall be exonerated, provided that any deposit shall be applied pursuant to *I.C. § 19-2923*.

**IT IS FURTHER ORDERED** That you shall reimburse the Idaho Department of Corrections for the cost of the presentence report in an amount not to exceed \$100.00; to be paid directly to the Probation & Parole Office.

**That you shall pay felony court costs and fees of \$240.50.**

That you shall pay additional costs, fees, restitution and reimbursements as follows:

a. Reimburse Costs of Prosecution	\$150.00
b. Reimburse District Court Fund	\$150.00
c. Fine	_____

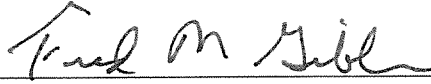
All of the above sums (except for the cost of the presentence report that is to be paid directly to Probation and Parole) shall be paid to the County Clerk at the Benewah County Courthouse. All payments shall be made in the form of cash, cashier's check or money order. The clerk shall distribute the payments in the priority set by the Idaho Supreme Court. A \$2.00 handling fee will be imposed on each installment/partial payment.

### NOTICE OF RIGHT TO APPEAL

**YOU, Joseph Duane Herrera,** ARE HEREBY NOTIFIED that you have the right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within forty-two (42) days of the entry of the written order in this matter.

**YOU ARE FURTHER NOTIFIED** that if you are unable to pay the costs of an appeal, you have the right to apply for leave to appeal in forma pauperis or to apply or to apply for the appointment of counsel at public expense. If you have questions concerning your right to appeal, you should consult your present lawyer.

DATED this 29 day of August, 2013.

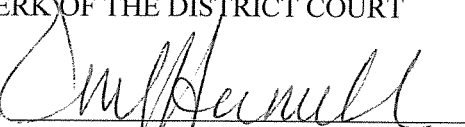
  
FRED M. GIBLER  
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 29 day of August, 2013 copies of the foregoing document(s) were emailed, faxed, mailed-postage prepaid, or sent interoffice to:

☒ Prosecuting Attorney for Benewah County FAXED: 208-245-1915  
☒ Defense Attorney: James E. Siebe FAXED: (208) 882-8769  
☒ Kootenai County Sheriff's Department FAX 208-446-1407  
☒ Idaho Probation & Parole [ ] EMAILED: dist1@idoc.idaho.gov [X] FAXED: 208-769-1481  
☒ Idaho Department of Correction [ ] EMAILED: centralrecords@idoc.idaho.gov [X] FAXED: 208-327-7445

CLIFFORD T. HAYES  
CLERK OF THE DISTRICT COURT

By   
Deputy Clerk

FILED  
BENEWAH COUNTY

2013 SEP 18 AM 10:52

BY: CFR DEPUTY

**SIEBE LAW OFFICES, PLLC**  
**JAMES E. SIEBE, ISBN 2362**  
Attorney for Defendant  
608 Northwest Blvd., Ste. 101  
Coeur d'Alene, ID 83814  
Phone: (208) 765-8188  
Fax: (208) 882-8769

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BENEWAH**

STATE OF IDAHO,

Plaintiff,

vs.

JOSEPH D. HERRERA,

Defendant.

) Case No. CR-2011-2053

) **ORDER FOR APPOINTMENT**  
) **OF IDAHO STATE APPELLATE**  
) **PUBLIC DEFENDER FOR**  
) **PURPOSES OF APPEAL**

THIS MATTER, having been presented to the Court pursuant to the Motion of the defendant, the Court having considered the premises, and good cause appearing therefor;

IT IS HEREBY ORDERED THAT the Idaho Appellate Public Defender should be and hereby is appointed as counsel for defendant for purposes of appeal.

DATED this 18 day of September, 2013.

Fred M. Gibler  
JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 18<sup>th</sup> day of September, 2013, I served a true and correct copy of the foregoing document by the method indicated and addressed to the following:

James E. Siebe  
SIEBE LAW OFFICES, PLLC  
P.O. Box 9045  
Moscow, ID 83843

( ) U.S. Mail  
( ) Overnight Mail  
( ) Hand Delivery  
(☒) Facsimile to (208) 882-8769

Benewah County Prosecutor  
701 College St.  
St. Maries, ID 83861

( ) U.S. Mail  
(☒) Hand Delivered  
( ) Overnight Mail  
( ) Facsimile to: (208) 245-1915

Carol Ryan  
Deputy Clerk



SARA B. THOMAS  
State Appellate Public Defender  
I.S.B. #5867

FILED  
BENEWAH COUNTY

2013 OCT -1 PM 12:00

ERIK R. LEHTINEN  
Chief, Appellate Unit  
I.S.B. #6247  
3050 N. Lake Harbor Lane, Suite 100  
Boise, ID 83703  
(208) 334-2712

BY: CJR DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR BENEWAH COUNTY

STATE OF IDAHO,

Plaintiff-Respondent,

v.

JOSEPH D. HERRERA,

Defendant-Appellant.

CASE NO. \_\_\_\_\_

DISTRICT COURT No.  
CR 2011-2053

NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, DOUGLAS PAYNE, COURTHOUSE, 701 COLLEGE STREET, ST. MARIES, ID, 83861, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the entered in the above-entitled action on the 29<sup>th</sup> day of August, 2013, the Honorable Fred Gibler, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-10).

3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is/are:

(a) Was sufficient evidence presented to support a guilty verdict?

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Pre-Sentence Investigation Report (PSI).

5. **Reporter's Transcript.** The appellant requests the preparation of the **entire reporter's standard transcript** as defined in I.A.R. 25(c). The appellant also requests the preparation of the additional portions of the reporter's transcript:

(a) Jury Trial held June 11-19, 2013, to include the voir dire, opening statements, closing arguments, jury instruction conferences, reading of the jury instructions, any hearings regarding questions from the jury during deliberations, return of the verdict, and any polling of the jurors (Court Reporters: Bryl Cinnamon, Val Nunemacher, and Anita Self, no estimation of pages was listed on the Register of Actions); and

(b) Sentencing Hearing held on (Court Reporter: Bryl Cinnamon, no estimation of pages was listed on the Register of Actions).

6. **Clerk's Record.** The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):

- (a) Probable Cause Affidavit In Support of Arrest filed December 27, 2011;
- (b) Transcript of Preliminary Hearing filed May 18, 2012;
- (c) Witness and Exhibit List filed June 13, 2012;
- (d) Notice of Intent to use I.R.E. 803(24) and 804(6) Evidence filed June 13, 2012;
- (e) Second Notice of Intent to Use 404(b) Evidence filed June 13, 2012;
- (f) Notice of Election to Proceed Under Idaho Code 9-420 filed June 28, 2012;
- (g) Certification of Records "Not Found" filed June 28, 2012;
- (h) State's Amendment to Notices of Intent to Use 404(b) and Hearsay Evidence filed June 28, 2012;
- (i) Plaintiff's Brief in Support of Admission of Victim's Statement and 404(b) Evidence filed June 28, 2012;
- (j) First Amendment to State's Witness List filed June 29, 2012;
- (k) State's Second Amended Witness and Exhibit List filed March 1, 2013;
- (l) Any exhibits, including but not limited to letters or victim impact statements, addendums to the PSI or other items offered at sentencing hearing.

## 7. I certify:

- (a) That a copy of this Notice of Appeal has been served on the Court Reporters: Bryl Cinnamon, Val Nunemacher, and Anita Self;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));
- (d) That arrangements have been made with Bear Lake County who will be responsible for paying for the reporter's transcript, as the client is indigent, I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e); and
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 1<sup>st</sup> day of October, 2013.



ERIK R. LEHTINEN  
Chief, Appellate Unit

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 1<sup>st</sup> day of October, 2013, caused a true and correct copy of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

BYRL CINNAMON  
COURT REPORTER  
PO BOX 527  
WALLACE ID 83873


VAL NUNEMACHER  
COURT REPORTER  
401 E FRONT ST  
COEUR D ALENE ID 83814

ANITA SELF  
COURT REPORTER  
PO BOX 9000  
COEUR D ALENE ID 83816

JAMES E SIEBE  
ATTORNEY AT LAW  
608 NORTHWEST BLVD STE 101  
COEUR D' ALENE ID 83814

DOUGLAS PAYNE  
BENEWAH COUNTY PROSECUTOR  
701 W COLLEGE AVE STE 101  
ST MARIES ID 83861

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
Hand delivered to Attorney General's mailbox at Supreme Court

  
NANCY SANDOVAL  
Administrative Assistant

ERL/tmf

AMENDED NOTICE OF APPEAL - Page 5

Page 290

To: Clerk of the Courts  
Idaho Supreme Court Building  
P.O. Box 83720  
Boise, Idaho 83720-0101  
Fax 208-334-2616

FILED  
GENERAL COUNTY  
2013 DEC 13 AM 9:20  
BY: CJR .DEPUTY

STATE OF IDAHO,	)	
	)	
Plaintiff/Respondent,	)	
	)	SUPREME COURT NO.:
vs.	)	41494
	)	
JOSEPH DUANE HERRERA,	)	
	)	
Defendant/Appellant.	)	

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on December 13th, 2013,  
I lodged an original transcript, totaling 106 pages, and  
three copies of the following hearing(s):  
Jury Trial held on June 19, 2013, for the  
above-referenced appeal with the District Court Clerk of  
the County of Kootenai in the First Judicial

Valerie Nunemacher  
Valerie Nunemacher, CSR, CCR, RPR

FILED  
SHEPHERD COUNTY

2013 DEC 13 AM 9:20

To: Clerk of the Courts  
Idaho Supreme Court Building  
P.O. Box 83720  
Boise, Idaho 83720-0101  
Fax 208-334-2616

BY: CZR DEPUTY

STATE OF IDAHO,	)	
	)	
Plaintiff/Respondent,	)	
	)	SUPREME COURT NO.:
vs.	)	41494
	)	
JOSEPH DUANE HERRERA,	)	
	)	
Defendant/Appellant.	)	

#### NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on December 13th, 2013, I lodged an original transcript, totaling 171 pages, and three copies of the following hearing(s):  
Jury Trial held on June 18, 2013, for the above-referenced appeal with the District Court Clerk of the County of Kootenai in the First Judicial

Anita Self  
Anita Self, CSR, CCR, RPR

FILED  
BENewah COUNTY

2013 DEC 13 AM 9:21

TO: Clerk of the Court  
Idaho Supreme Court  
P.O. Box 83720  
Boise, ID 83720-0101

BY: CJR DEPUTY

DOCKET NO. 41494

( STATE OF IDAHO  
(  
( vs.  
(  
( JOSEPH DUANE HERRERA

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on December 13, 2013, I lodged a transcript of 392 pages in length for the above-referenced appeal with the District Court Clerk of the County of Benewah in the First Judicial District. I have lodged all assigned appellate transcript(s) requested in the Notice of Appeal.

6/11/13, Jury trial (first 3 days)  
8/29/13, Sentencing

  
Byrl Cinnamon

December 13, 2013



IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BENEWAH

STATE OF IDAHO,	)	
Plaintiff-Respondent,	)	
	)	SUPREME COURT NO. 41494
vs.	)	
	)	CERTIFICATE OF EXHIBITS
JOSEPH DUANE HERRERA,	)	
Defendant-Appellant.	)	
_____	)	

I, Carol Ryan, Deputy Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Benewah, do hereby certify:

That the following is a list of exhibits which were offered or admitted into evidence during the hearing/trial in this cause:

**COURT'S EXHIBITS**

**DESCRIPTION**

1	(Confidential)	Presentence Report filed August 23, 2013 Letter from Kassidy Comack and Document entitled "My Career Choice....."
2	(Confidential)	Court Minutes of Probable Cause Hearing December 27, 2011
3	(Confidential)	Order for Investigators To be filed Under Seal, April 19, 2012
4	(Confidential)	Order for Investigator Funds June 20, 2012
5		Transcript of Preliminary Hearing filed May 18, 2012

**PRELIMINARY HEARING, March 26, 2012**

PLAINTIFF'S EXHIBITSDESCRIPTION

1 Unofficial Death Certificate Abstract  
Admitted

**PRETRIAL MOTIONS HEARING, July 13, 2012**PLAINTIFF'S EXHIBITSDESCRIPTION

1 Affidavit of Rodger Hossfeld  
Admitted

2 Text Messages between Stefanie Comack  
And Kaytlin Comack  
Admitted

3 Miranda Warning and Waiver  
Admitted

DEFENDANT'S EXHIBITSDESCRIPTION

A St. Maries Gazette Record newspapers  
December 28, 2011  
January 4, 2012  
January 18, 2012  
January 25, 2012  
March 28, 2012  
April 4, 2012  
April 11, 2012  
April 18, 2012  
May 2, 2012  
May 9, 2012  
May 16, 2012  
May 30, 2012  
June 13, 2012  
July 18, 2012  
All Admitted, but not included

B St. Maries Gazette Record Blitz  
Admitted

JURY TRIAL, June 11, June 12, June 18 and June 19, 2013

<u>PLAINTIFF'S EXHIBITS</u>	<u>DESCRIPTION</u>
1	Video Admitted
2	Gun (photo provided) Admitted
3	Shell Casing (photo provided) Admitted
4	Video Admitted, <del>but not included</del> CR
5, 6, 7, 8, 9	Photos Admitted
10	Audio Recording Admitted
11	Audio Recording Admitted <b>Note: this Exhibit is not included as CD is broken. However, this audio is included in Plaintiff's Exhibit 10.</b>
12	Text Messages between Stefanie Comack And Kaytlin Comack Admitted
13 - 55, 61 - 79	Photos Admitted
80	Magazine (photo provided) Admitted
81	Bong (photo provided) Admitted

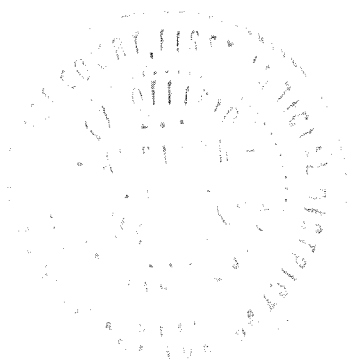
82	Lab Report Admitted
<u>PLAINTIFF'S EXHIBITS</u>	<u>DESCRIPTION</u>
83	Bullet (photo provided) Admitted
84	Forensic Firearm and Toolmark Report Admitted
85	Diagram (not included due to size) Admitted
86	Diagram (not included due to size) Admitted
87	Autopsy Report Admitted
88	Photo Admitted

I do further certify that all exhibits in the above entitled cause will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcripts and the Clerk's Record as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at St. Maries, Idaho this 23rd day of December, 2013.

DEANNA BRAMBLETT  
Clerk of the District Court

By: Carol Ryan  
Deputy



IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BENEWAH

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	
	)	
v.	)	Case No. 41494
	)	
JOSEPH DUANE HERRERA,	)	CERTIFICATE TO RECORD
	)	
Defendant-Appellant.	)	
_____	)	

I, DEANNA BRAMBLETT, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Benewah, do hereby certify that the above and foregoing Record in the above-entitled cause was compiled and bound under my direction and is a true, full and correct Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I do further certify that all documents, x-rays, charts and pictures offered or admitted in the above-entitled cause will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript and Clerk's Record as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Benewah County, Idaho, this 23rd day of December, 2013.

DEANNA BRAMBLETT  
Clerk of the District Court

By: Carol Ryan  
Deputy

cc: Supreme Court/Court of Appeals  
CERTIFICATE TO RECORD

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BENEWAH

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	
	)	
v.	)	Supreme Court Case No. 41494
	)	
JOSEPH DUANE HERRERA,	)	CERTIFICATE OF SERVICE
	)	
Defendant-Appellant.	)	
_____	)	

I, Carol Ryan, Deputy Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Benewah, do hereby certify that I have personally served or mailed, by United States Mail, postage prepaid, one copy of the Clerk's Record and any Reporter's Transcript to each of the parties or their Attorney of Record as follows:

State Appellate Public Defender  
Attorney for Appellant  
3050 N Lake Harbor Ln. Ste. 100  
Boise, ID 83703

Lawrence Garth Wasden  
Attorney for Respondent  
Office of the Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 24<sup>th</sup> day of December, 2013.

DEANNA BRAMBLETT  
Clerk of the District Court

By Carol Ryan  
Deputy Clerk

cc: Supreme Court/Court of Appeals

CERTIFICATE OF SERVICE